Petition

81-243

Office Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No._____

RONALD R. SILVERTON,

Petitioner,

vs.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, THE STATE BAR OF CALIFORNIA, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

I

May a claim under 42 U.S.C. § 1983 be precluded by a prior adjudication on that claim in a state court habeas corpus proceeding when in between the adjudication and the claim, the state court criminal conviction, which was put at issue in both the habeas corpus proceeding and the § 1983 claim, was the sole basis of an act by a federal agency to deprive the applicant of a license to practice before that federal agency; and the hearing officer who heard the evidence that resulted in the loss of the federal license adjudged the state conviction to require a review.

II

In the following circumstances does the doctrine of collateral estoppel preclude petitioner herein a trial in the Federal District Court on the allegations of the complaint he filed under 42 U.S.C. § 1983 to the effect that the state infringed his federal constitutional rights by convicting him of a crime without affording him a trial that comported with federal standards of due process:

(1) The issue of the lack of a fair trial, due to no fault of the petitioner, was not decided on the merits at the original state criminal trial, but, was explored thereafter in a state court habeas corpus proceeding which denied relief.

(2) The question of whether petitioner had a full and fair opportunity to litigate the fair trial issue in the state habeas corpus hearing was subsequently raised by petitioner:

(a) In a petition for writ of habeas corpus to a Federal District Court that denied to petitioner an evidentiary hearing; and

(b) Thereafter, before a Federal Administration Law Judge who heard the evidence in a proceeding brought by a federal agency (the U.S. Treasury Dept.) to remove petitioner's federal license because of the state criminal conviction. One of the two counts of petitioner's § 1983 complaint is for the timely administrative review of the federal agency's reversal of that Federal Administrative Law Judge's Opinion which expressed doubt that the trial resulting in petitioner's state criminal conviction met the standards required by the Fifth and Sixth Amendments to the United States Constitution.

CERTIFICATION AS TO INTERESTED PARTIES

The undersigned Petitioner, certifies that the following listed parties have an interest in the outcome of this case. These representations are made to enable justices of the Court to evaluate possible disqualifications or recusal.

There are no other interested parties other than those named in the caption of this case and their attorneys of record.

by _____
Ronald R. Silverton
In Pro Persona

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II In the set forth circumstances does the doctrine of collateral estoppel preclude petitioner herein a trial in the Federal District Court on the allegations of the complaint he filed under 42 U.S.C. § 1983 to the effect that the state infringed his federal constitutional rights by convicting him of a crime without affording him a trial that comported with federal standards of due process. 3

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IN THE
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RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The petitoner RONALD R. SILVERTON respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on May 11, 1981.

OPINION BELOW

The Opinion of the Court of Appeals for the Ninth Circuit is reported in 644 F. 2d 1341 (1981) and appears in the Appendix hereto as Exhibit A.

JURISDICTION

The Judgment of the Court of Appeals for the Ninth Circuit was entered on May 11, 1981. This Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

I

May a claim under 42 U.S.C. § 1983 be precluded by a prior adjudication on that claim in a state court habeas corpus proceeding when in between the adjudication and the claim, the state court criminal conviction, which was put at issue in both the habeas corpus proceeding and the § 1983 claim, was the sole basis of an act by a federal agency to deprive the applicant of a license to practice before

that federal agency; and the hearing officer who heard the evidence that resulted in the loss of the federal license adjudged the state conviction to require a review.

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In the following circumstances does the doctrine of collateral estoppel preclude petitioner herein a trial in the Federal District Court on the allegations of the complaint he filed under 42 U.S.C. § 1983 to the effect that the state infringed his federal constitutional rights by convicting him of a crime without affording him a trial that comported with federal standards of due process:

(1) The issue of the lack of a fair trial, due to no fault of the petitioner, was not decided on the merits at the original state criminal trial, but was explored thereafter in a state court habeas corpus proceeding which denied relief.

(2) The question of whether petitioner had a full and fair opportunity to litigate the fair trial issue in the state habeas corpus hearing was subsequently raised by petitioner:

(a) In a petition for writ of habeas corpus to a Federal District Court that denied to petitioner an evidentiary hearing; and

(b) Thereafter, before a Federal Administrative Law Judge who heard the evidence in a proceeding brought by a federal agency (the U.S. Treasury

Dept.) to remove petitioner's federal license because of the state criminal conviction. One of the two counts of petitioner's §1983 complaint is for the timely administrative review of the federal agency's reversal of that Federal Administrative Law Judge's Opinion which expressed doubt that the trial resulting in petitioner state criminal conviction met the standards required by the Fifth and Sixth Amendments to the United States Constitution.

STATEMENT OF THE CASE

A. How The Federal Question Was Presented

The jurisdiction of the district court was invoked on the following two grounds pled in the amended complaint filed in the federal district court on February 13, 1978. (This amended complaint is Exhibit B in the Appendix to this Petition.):

1. The Federal Administrative Procedure Act, Section 702, of Title 5; provides for judicial review of any act or order of an administrative agency or subdivision of the executive branch which aggrieves or injures any party, and which action was not specifically excluded by Congress from judicial review.

2. 42 U.S.C. §1983 and 42 U.S.C. §1343 (3) provides for a complaint for deprivation of plaintiff under color of state law or usage, of rights and privileges secured by the Constitution of the United States.

B. HISTORY OF THIS LITIGATION.

Petitioner Silverton had been admitted to practice law and to practice as a Certified Public Accountant in the State of California in 1958 and practiced therein continuously until April 1972. At that time, he was convicted in the Superior Court of the State of California of violating California Penal Code Section 182.1 and Section 182.4 and Section 653(f), criminal conspiracy and solicitation of a crime (CT 92, 28-93, 4). Because of these convictions of Mr. Silverton, in 1975 his license to practice law and his license to practice as a Certified Public Accountant were each revoked (CT 12, 13, 26, 68, 139-149).

These convictions were affirmed on appeal by the Court of Appeals of the State of California, Second Appellate District (CT 13, 25, 43-53). On December 29, 1972, the California Supreme Court denied Mr. Silverton's Petition for Hearing (CT 25, 54), and thereafter the United States Supreme Court dismissed Mr. Silverton's Appeal for Want of a Federal Question (CT 25); 412 U.S. 901 (1973); reh. den. 414 U.S. 882 (1973).

On September 26, 1973, Mr. Silverton filed a Petition for a Writ of Habeas Corpus attacking the validity of his conviction, in the Superior Court of the State of California (the state trial court). Silverton alleged two violations of his Federal Constitu-

tional right to a fair trial. In summary, these are as follows (these appear at CT 95-96):

1. That the judge who convicted Silverton considered matters prejudicial to Silverton's protestations of innocence, brought to his attention outside of the courtroom and without the knowledge of SILVERTON and his counsel (for further detail see Exhibit C of the Appendix to this Petition, a three page declaration under penalty of perjury of a witness to the conduct of the trial judge).

2. That Silverton waived his right to a trial and submitted the case on the transcript of the preliminary hearing because the judge had misled his counsel and ultimately him to the effect that the judge would find Silverton innocent of the charge if the matter were submitted without a trial on the preliminary transcript (for further detail see Exhibit D of the Appendix to this Petition, a two-page letter from Silverton's counsel to Silverton prior to Silverton's submitting the case to the judge on the transcript).

An evidentiary hearing on the two contentions was held in case No. 2A 281 235, Los Angeles Superior Court, in January 1974. At that hearing, Silverton's diligence in presenting his grounds of collateral attack, based on his recent dicovery of them, was stipulated to by the attorney for the respondent therein, the Los Angeles County Dis-

trict Attorney (111:1-10 of the transcript of the evidentiary hearing. This transcript, comprising 353 pages, is Exhibit E lodged with the Federal District Court in this matter). The trial judge, who presided at the hearing, denied the Petition. (The denial was on January 11, 1974.)

Silverton then filed a Writ of Habeas Corpus in the Court of Appeals of the State of California, Second Appellate District, 2nd Crim. No. 24943, on the same two grounds and additionally, claimed that the denial of his Petition for Writ of Habeas Corpus, in the trial court was based on a constitutionally inferior evidentiary hearing for the following five reasons:

1. The fact finding procedure employed by the State of California in the habeas corpus evidentiary hearing was not adequate to afford a full and fair hearing because:

1. The Court denied at the evidentiary hearing Silverton's request to introduce evidence of the results of polygraph examinations of crucial witness Steven L. Dobbs, a witness whose testimony, if believed, would mandate a new trial. This witness is an attorney who testified that the Judge at Silverton's criminal trial told him words to the effect that he "had to find Silverton guilty because he received so much pressure to do so [from outside the court-

room]") (Dobbs declaration is Exhibit C in the appendix hereto). At the time of this request the reliability of the polygraph in general, and its reliability in the specific examination of Mr. Dobbs was uncontradictedly demonstrated in Silverton's offer of proof. This offer of proof, which the court denied, included an offer to the court to submit the witness Dobbs to an examination by polygraph by any competent polygraph operator chosen by the court or respondent; the costs of said examination would be borne by Silverton (Transcript of the evidentiary hearing Exhibit E lodged with the Federal District Court, 170:11-192:16).

2. The material facts were not adequately developed at the state habeas corpus evidentiary hearing because:

the Court denied at the evidentiary hearing Silverton's request to introduce into evidence the testimony of Betty Rose and Dr. Gerard Stavish (the two "co-conspirators" whose conduct as ascribed to Silverton was the basis of Silverton's conviction).[1/] Silverton's offer of proof was made that each of the "co-

1. The substance of the charge against Silverton was that he acted through Betty Rose to solicit a person who had been in an accident, to see Dr. Gerard Stavish for treatment of non-existent injuries. [See preliminary transcript of state court proceeding.]

conspirators" would testify to the effect that each had notified Silverton just prior to his submission of the matter on the transcript, that each would testify truthfully on the witness stand if the matter went to trial, that Silverton had no involvement with either of them in regard to the conduct constituting the basis of the prosecution (Transcript of the evidentiary hearing Exhibit E lodged with the federal district court, 93:12-102:26).

The relevancy of the excluded testimony is twofold: First, it shows Silverton's state of mind, vis-a-vis, having a trial rather than submitting the matter on the transcript, prior to plaintiff being informed by his attorney, Sharon Freis, of Judge Caldecott's statement that "if he were the Magistrate at the preliminary hearing he might not have held Mr. Silverton to answer."

Secondly, it obviates the point made by the District Attorney, the adverse counsel at the evidentiary hearing, that "co-conspirator Stavish" would cooperate with the prosecutors of Silverton in such a manner as to show that Silverton was culpable (Exhibit "E", page 65, lines 22-25).

The testimony of Dr. Gerard Stavish and Betty Rose before the Local Administrative Committee convinced the examiner representing the California State Bar and the Local Administrative Committee that disbarment was not warranted.

The remaining three reasons urged by petitioner that the state court habeas corpus evidentiary hearing did not afford the applicant a full and fair fact hearing were:

3. Flagrant, calculated misconduct on the part of respondent's counsel, the Los Angeles District Attorney, which undoubtedly prejudiced the trier of fact at the evidentiary hearing against Silverton. Over the objection of Silverton, the counsel for respondent, in bad faith, asked a most scurrilous series of questions to a character witness for Silverton (a California Superior Court Judge). These questions impugned the ethics, honesty, and integrity of Silverton. Respondent's counsel, the District Attorney, later withdrew the questions and apologized to Silverton, admitting that he knew better than to ask questions to which he was not prepared to prove up the answers. However, this apology before the court contained inferences of the bad character of Silverton and was itself designed to taint the trier of fact (Transcript of evidentiary hearing, Exhibit E, lodged with the federal district court, 201:13-24; 194-5; 207:8; 201:13-24).

4. The Los Angeles Superior Court denied Silverton's motion for discovery, timely and properly made for information that would have been helpful to Silverton at the evidentiary hearing, while permitting to the District Attorney, who represented

respondent at the evidentiary hearing, discovery over the proper and timely objection of Silverton.

After hearing the motions and objections, the Court did make the following findings:

a. That the petition for writ of habeas corpus in the instant case, A-281234, was a criminal proceeding for purpose of determining what discovery considerations applied.

b. That plaintiff's motion to take the deposition of each of the proposed deponents was properly before the Court for consideration.

c. That plaintiff showed need and relevancy to take the depositions of each of the proposed deponents, provided however, as was agreed by plaintiff, no showing could be made that the proposed deponents would not be available as witnesses in Court.

Though the findings were as above stated, the Court held as a matter of law that it did not have the power to permit the plaintiff to take depositions of the three proposed deponents.

In **Harris v. Nelson,** 394 U.S. 286, 22 L.Ed. 2d 281, 89 S. Ct. 1082 (1969) the court decided when a petitioner for writ of habeas corpus is entitled to pre-hearing discovery. The Court stated:

> " . . . a court, confronted by a petition for habeas corpus which establishes a prima facie case for relief, may use or authorize the

use of suitable discovery procedures... reasonably fashioned to eliciting facts necessary to help the court dispose of the matter as law and justice require . . . "
(394 U.S. 290)

5. Denial by the Los Angeles Superior Court, the Honorable James Kolts, Judge Presiding, of Silverton's motion to disqualify said Judge James Kolts under the authority of **California Code of Civil Procedure** Section 170.5 from sitting as the trier of fact at the evidentiary hearing granted by the Sacramento Superior Court. (Judge Kolts was one of the persons who allegedly improperly urged upon plaintiff's trial judge contentions, outside the courtroom and outside of the presence of Silverton and/or his counsel, about Silverton's guilt; and whose deposition Silverton unsuccessfully tried to obtain on the denied discovery motion. The failure of Judge Kolts to disqualify himself denied to Silverton the same protection of **California Code of Civil Procedure** Section 170.5, permitted all other persons using the California Superior Court; and compelled Silverton to use the single summary challenge permitted under **California Code of Civil Procedure** Section 170.6 to disqualify Judge James Kolts from sitting as the trier of fact at the evidentiary hearing. This use of the single summary challenge precluded Silverton the option of its use to

disqualify the judge who did hear the evidentiary hearing.

The Petition for Writ of Habeas Corpus to the state court of appeal was denied on April 3, 1974, and the California Supreme Court denied a hearing on May 1, 1974 (CT 99, 166).

On June 12, 1974 in a further effort to invalidate his convictions, Mr. Silverton filed a Petition for a Writ of Habeas Corpus in the United States District Court for the Central District of California, **Silverton v. California Adult Authority,** No. CV 74-1636-MML (J) (CT 27, 99), alleging that he did not obtain a full and fair state habeas corpus evidentiary hearing for the five same reasons set forth, **supra,** (a copy of said Petition is Exhibit E in the Appendix hereto). This Petition was denied on March 31, 1975 (See Exhibit F to this Appendix, a one page judgment of denial by the Federal District Court and a 10 page magistrate's recommendation which the judgment incorporates). Also denied were Mr. Silverton's application to the Federal District Court for reconsideration of the denial; and his application to the Federal District Court for a certificate of probable cause (CT 28, 99-100). Subsequently, on November 11, 1975, the Ninth Circuit Court of Appeals refused Mr. Silverton a certificate of probable cause, Case No. 75-8390, because his petition was "legally frivolous" (CT 28, 100-101).

The United States Supreme Court denied his Petition for a Writ of Certiorari in 1976 at 425 U.S. 912, 96 S.Ct. 1509 (CT 101, 106).

C. Current Litigation.

On January, 19, 1977, the United States Department of the Treasury filed an amended complaint against Silverton seeking to disbar or suspend him from practice before the Internal Revenue Service pursuant to 31, C.F.R. § § 10 **et seq.** solely because of his state court criminal convictions and his consequent loss of his licenses to practice as an attorney and a certified public accountant within the State of California (this amended complaint is Exhibit G to the Appendix hereto). Silverton responded by admitting his disbarments and conviction but claiming his convictions and consequent disbarments void because the convictions were constitutionally infirm (for the reasons set forth above). (Silverton's answer and amended answer to the Treasury Department's complaint are Exhibit H to the Appendix hereto).

After hearing the evidence, receiving exhibits and briefs from both parties, the Administrative Law Judge in his 17 page written decision and order questioned whether Silverton was guilty of the crimes of which he had been convicted and stated that there should be a review of the trial procedures

resulting in those convictions. (The complete opinion and order is Exhibit I in the Appendix hereto.) The most compelling part thereof relied upon by Silverton in his dismissed lawsuit to the federal district court (Exhibit B in the Appendix hereto) and his appeal to the Ninth Circuit Court, which affirmed the district court (Exhibit A in the Appendix hereto) is below quoted (it appears on page 8 of Exhibit I of the Appendix hereto) as follows:

> "If Mr. Silverton had elected to try the case before a jury, I am convinced beyond any doubt whatsoever that he would now be a practicing attorney and a CPA in California and this instant action would never have commenced... I find sufficient doubt running through this entire record... if I were Governor of the State of California, I would have a detailed investigation made of the case before deciding whether or not to grant Mr. Silverton a pardon."

The Administrative Law Judge then ordered that plaintiff be suspended from practice before the Internal Revenue Service for a period of three months.

On appeal to the Secretary of the Treasury, the General Counsel, performing pursuant to appropriate delegation of function (CT 10), after review of the entire record, on November 1, 1977, issued a

decision modifying the three month suspension, to disbarment from practice before the Internal Revenue Service (CT 10-11) (This decision is Exhibit J in the Appendix hereto).

Mr. Silverton then sued in the federal district court the Department of the Treasury under the Administrative Procedure Act for judicial review of this disbarment (5 U.S.C. § 702); and the Clerk of the California Superior Court, the California State Bar, and the California State Board of Accounting, seeking to expunge the record of his disbarments and of the two felony convictions under the Civil Rights Act, 42 U.S.C. § 1983 (See **supra** under "How the Federal Question was Presented" for statement of the causes of action in this suit. A copy of the complaint is exhibit B in the Appendix hereto).

The California State Bar and the California State Board of Accountancy filed motions to dismiss Silverton's first amended complaint in the federal district court (CT 20-54; 62-63; 66-90). The Clerk of the California Superior Court and the Treasury Department did not respond to Silverton's action. The district court granted the motions of the moving parties; and on its own motion dismissed the Clerk of the California Superior Court, all on the grounds the matter was res judicata. The district court then on its own motion dismissed the action

against the Treasury Department on the ground that it "are (sic) not an appropriate party here" (See the four page transcript of the proceedings, the last two lines thereof, Exhibit K in the Appendix hereto). Said judgment of decision and order dismissing with prejudice Silverton's complaint was entered May 9, 1978 (See Exhibit L in the Appendix hereto).

Thereafter, on May 9, 1978, Silverton filed a timely Notice of Appeal to the United States Court of Appeals for the Ninth Circuit (a copy of which is Exhibit M in the Appendix hereto).

The United States Court of Appeals for the Ninth Circuit affirmed the judgments of the district court (See the opinion of the Ninth Circuit Court of Appeals, Exhibit A in the Appendix hereto). It is to this judgment of affirmance that the instant Petition for Writ of Certiorari is directed.

REASONS FOR GRANTING THE WRIT

A. An Important Question of Law Not Previously Decided By This Court has been, in this Case, Decided by the Ninth Circuit Court of Appeal in Such a Way as to Create an Injustice for Persons Affected by the Acts of Government Agencies or Subdivisions of the Executive Branch.

The Ninth Circuit Court of Appeals in this instant case has established the following unjust rule as to when a federal district court must dismiss a Federal

Civil Rights action (42 U.S.C. § 1983):

That collateral estoppel applies to preclude a claim brought under §1983 if the issue, which would otherwise be reviewable, was previously litigated in a state habeas corpus hearing.

This rule is unjust in the instant case because petitioner herein was never afforded a full and fair hearing of the issue to be heard that comports with federal standards. The failure of the state court that provided the evidentiary habeas corpus proceeding to afford a fact finding procedure in accordance with federal standards; or to provide a forum for the adequate development of material facts; or to afford a full and fair hearing, was raised unsuccessfully in the state court of appeal and on a petition for writ of habeas corpus in the federal district court. (No evidentiary hearing was provided in the Federal Habeas Corpus proceeding.)

Though the Administrative Procedure Act 5 U.S.C. § 702, gives petitioner herein a right to a judicial review of the Treasury Department disbarment, such a right is of no use without the ability to collaterally attack the state conviction which affords the Treasury Department the "substantial relevant evidence" required for its disbarment not to be capricious or an abuse of discretion.

As correctly adjudged by the Ninth Circuit Court of Appeals in this case: "in order for Silverton to

prevail against any of the defendant-appellees, it is necessary for him to void by collateral attack, through the vehicle of a §1983 proceeding, the two felony convictions in the California State Court and the disbarments and revocation flowing therefrom" (this statement appears in 644 F.2d at 1345). This is because the action of the federal agency was solely caused by such convictions and disbarment.

That 42 U.S.C. § 1983 is equal to the task of expunging the record of Silverton's conviction was decided in the case of **Shipp v. Todd,** 568, F. 2d 133 (9th Cir. 1978), wherein Shipp, a former state prisoner, filed a civil rights complaint under 42 U.S.C. §1983 and 28 U.S.C. § 1343 (3) against Todd in Todd's capacity as Clerk of the Montana State Court in which Shipp was convicted of burglary in 1965, he sought, among other things, a mandatory injunction directing Todd to expunge the judgment of conviction from the court records in Todd's custody. The court, in discussing Todd's contention that he is not amenable to suit states:

> "Appellee argues and we agree that the Civil Rights Act does not abrogate the quasi-judicial immunity accorded him in the exercise of his judicial functions. (citation) That immunity, however, is limited to actions for damages and does not extend to suits for injunctive relief. (Citations)."

Three facts that mandate against applying the collateral estoppel doctrine as called for by the Ninth Circuit Court of Appeals in this case are:

1. **In the habeas corpus review by the federal district court there was never a hearing on the merits.** The district court's judgment incorporated the report and the recommendations of the United States Magistrate (both are contained as Exhibit F in the Appendix to this Petition). This report was filed on March 5, 1975, by the Magistrate sans any hearing on Silverton's petition for Writ of Habeas Corpus (a copy of Silverton's Petition for Writ of Habeas Corpus to the federal district court is Exhibit E in the Appendix to this Petition).

2. **Petitioner's claim under 42 U.S.C. § 1983 seeking expungement of the records of his state criminal conviction was necessitated by the action of the federal government (the U.S. Treasury Department) proceeding against Silverton** long after the adjudication of Silverton's conviction by a state habeas corpus proceeding. (The decision of the state court on the habeas corpus evidentiary hearing was on January 11, 1974. The judgment of the federal district court on the petition for habeas corpus to review the adequacy of the state court habeas corpus evidentiary hearing was on

March 31, 1975 (said judgment is Exhibit F in the Appendix hereto). It was not until January 19, 1977, that the United States Department of the Treasury filed an amended complaint against Silverton seeking to disbar or suspend him from practice before the Internal Revenue Service solely as a result of his past state convictions and consequent loss of state licenses to practice law and to practice as a Certified Public Accountant (See complaint attached as Exhibit G in the Appendix hereto). Silverton's defense was that the past state criminal convictions and consequent loss of his state licenses were solely the result of a trial procedure that violated his Federal Due Process Rights guaranteed to him by the United States Constitution (Said answer is Exhibit H of the Appendix hereto). Is this defense precluded by the fact that it was the subject of a Petition for Writ of Habeas Corpus previously passed upon by a state habeas corpus tribunal? If so, then we have the inherently unfair proposition that once an issue is decided contrary to the petitioner's position by a state habeas corpus tribunal, any agency of the federal government or subdivision of the federal government's executive branch may remove a privilege or right of an individual without that individual being able to raise

in his defense any issue that was previously looked at by the state habeas corpus tribunal, and thus forfeit the right given by the Administrative Procedure Act for a review of that issue by the federal district court. The Federal Administrative Procedure Act, 5 U.S.C. § 702, provides for judicial review of any act or order of an administrative agency or subdivisions of the executive branch which aggrieves or injures any party, and which action was not specifically excluded by Congress from judicial review. The preclusion of this review, of the offending issue, in addition to being unfair, is contrary to the Congressional mandate in the Administrative Procedure Act, (5 U.S.C. § 702) which provides for a judicial review by a Federal District Court unless specifically excluded by Congress (No specific exclusion by Congress is noted concerning a review of the Treasury Department's decision in the instant case.)

If the defense to the order of the administrative agency raised by petitioner of the constitutional infirmity of his conviction (which defense of necessity required a collateral attack via 42 U.S.C. § 1983[2]) is not precluded, then the Ninth Circuit

2. See pages 18 next to last paragraph through page 19 of this Petition, **supra.**

Court of Appeals' decision in the instant case was erroneous when it framed a rule permitting Federal District Courts to deny a review of an alleged constitutional infirmity of a state court conviction if that federal constitutional infirmity in the state court proceeding had already been reviewed by a state court on a prior writ of habeas corpus directed to it.

3. **In the instant case the injustice of the position of the Ninth Circuit Court of Appeals is made evident by the fact that the trier of fact appointed by the United States Treasury Department to hear the issues raised in the pleadings agreed in his opinion that the factual assertion of Silverton that he did not receive a fair trial in the state court should be looked into.** In his opinion he stated:

> "I find sufficient doubt running through this entire record, that if I were the Governor of the State of California, I would have a detailed investigation made of the case before deciding whether or not to grant Mr. Silverton a pardon."
>
> (Decision of Kenneth L. Travis, Administrative Law Judge - Bureau of Alcohol, Tobacco, and Firearms Department of the Treasury, page 8, Exhibit I of the Appendix hereto).

This was the only hearing Silverton had in the federal system concerning his protestation of innocence

and that the trial in the state court was not in accord with the procedures mandated by the Due Process Clause of the Federal Constitution.

B. **The proper functioning of the federal judiciary requires the granting of this Writ.** The case of **Sanders v. United States** 373 U.S. 1, 10 L.Ed. 29, 148, 83 S.Ct. 1068, is authority for the proposition that it is an abuse by a federal district court to apply res judicata at will if a second petition to it for review of a prior decision is predicated on a **different ground** though the **relief sought is the same.** In the instant case, the successive petition for review to the Federal District Court is predicated on the **same grounds** as the former petition but the **relief sought is different,** viz. a review of the order of a subdivision of the executive branch. This order was not in existence at the time of the prior review.

CONCLUSION

For the afore expressed reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

DATED: July 20, 1981

Respectfully submitted,

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APPENDICES

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APPENDIX
"A"

ATTORNEY
State Habeas Proceedings In Disbarment Held Final

(U.S.C.A. 9th, May 11, 1981)

AMENDED OPINION

RONALD R. SILVERTON,

Plaintiff-Appellant,

vs.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES, THE STATE BAR OF CALIFORNIA, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Defendants-Appellees.

No. 78-2964

United States Court of Appeals,
Ninth Circuit

Argued and Submitted July 2, 1980.
Decided May 11, 1981

Affirmed.

Appeal from the United States District Court for the Central District of California.

Before HUG and FERGUSON, Circuit Judges, and EAST,* District Judge.

AMENDED OPINION

EAST, District Judge:

Silverton appeals from the judgment entered by the District Court on May 9, 1978, 449 F. Supp. 1004 (C.D. Cal. 1978), dismissing with prejudice Silverton's First Amended Complaint and Civil Rights Action (42 U.S.C. § § 1981 and 1983) as to each of the defendants-appellees Department of the Treasury of the United States of America, Office of the Director of Practice, and Leslie S. Shapiro, Director of Practice (Treasury); John J. Corcoran, County Clerk and Clerk of the Superior Court of California, County of Los Angeles, (Clerk); The State Bar of California (Bar); and The California State Board of Accountancy (Board).

We note jurisdiction under 28 U.S.C. § 1291, and affirm.

SILVERTON'S STATE CONVICTIONS:

In April, 1972, Silverton was convicted of one count of conspiracy to defraud an insurance company and one count of solicitation of grand theft in a California Superior Court. The convictions were affirmed by the California Court of Appeal on October 31, 1972. The California Supreme Court denied Silverton's petition for review on Decembr 9, 1972 and the United States Supreme Court dismissed Silverton's appeal for want of a substantial federal question. 412 U.S. 901, 93 S.Ct. 2292, 36 L.Ed. 2d 967 (1973).

SILVERTON'S DISBARMENTS AND REVOCATION:

Following the finality of Silverton's felony convictions, he was, upon findings and recommendations of the Bar, disbarred by the California Supreme Court from the practice of law in California. **Silverton v. State Bar,** 14 Cal. 3d 517, 121 Cal. Rptr. 596, 535 P.2d 724, 121 Cal. Rptr. 596 (1975), and his certified public accountant certificate was revoked by the Board. Also an administrative law judge, after a hearing, suspended Silverton from practice for three months before the Internal Revenue Service pursuant to 31 C.F.R. §§ 10, **et seq.** The General

Counsel of Treasury, acting for the Secretary of the Treasury, after a full review of the record, modified the three-month suspension to complete disbarment.

PRIOR STATE AND FEDERAL HABEAS PROCEEDINGS:

During September, 1973, Silverton filed a Petition for a Writ of Habeas Corpus in the California Superior Court (State Habeas 1). An evidentiary hearing was held and the petition denied. The California Court of Appeal affirmed.

On March 8, 1974, Silverton filed a habeas petition in the California Court of Appeal (State Habeas 2). That court denied the petition on April 3, 1974. A petition for rehearing was denied by the California Supreme Court on May 1, 1974.

On June 12, 1974. Silverton petitioned the United States District Court, Central District of California, for habeas relief. That District Court on March 3, 1975 denied the petition without an evidentiary hearing on several grounds of a failure to state facts sufficient to grant relief, lack of subject matter jurisdiction, and that Silverton's federal habeas claims were barred under the doctrine of res judicata and/or collateral estoppel. Subsequently, the District Court denied reconsideration and refused to issue a certificate of probable cause for appeal. This court declined to issue a certificate of probable

cause on the grounds that Silverton's attempted appeal was "legally frivolous" (C.A. 75-8390). The Supreme Court of the United States denied Silverton's petiton for certiorari, **Silverton v. California Adult Authority,** 425 U.S. 912, 96 S.Ct. 1509, 46 L.Ed. 2d 762 (1976).

SILVERTON'S CLAIMS IN EACH OF THE HABEAS PROCEEDINGS:

In each of the two state and the one federal habeas proceedings, Silverton relied upon these allegations of Fifth and Sixth Amendment infringements:

(1) Lack of a Fifth Amendment due process trial because the Superior Judge considered extrajudicial matters and information;

(2) Sixth Amendment violation of Silverton's right to a jury trial because he submitted his case to the Superior Court on the record of the preliminary hearing after the Superior Court told his advisory counsel that there was no way Silverton could be convicted on those facts; and

(3) Sixth Amendment violation of Silverton's right to confrontation of witnesses for the same reasons of submission.

In the California Court of Appeals State Habeas 2 proceedings, as well as in the federal habeas proceedings, Silverton raised five alleged procedural or evidentiary defects.

As stated above, each of those alleged principal claims were rejected as meritless in the two state and one federal habeas proceedings, and the five procedural or evidentiary defects were rejected by the California Court of Appeals and the District Court in the federal habeas proceedings as not reaching constitutional proportions.[1]

PROCEEDINGS IN THE DISTRICT COURT IN THESE PROCEEDINGS:

In his original complaint, Silverton only sought to set aside his disbarment by Treasury under the Administrative Procedure Act (APA), 5 U.S.C. §§701 and 706, on the grounds that the APA was unconstitutional.

On February 18, 1978, Silverton filed a first amended complaint joining as additional defendants the Clerk[2], the Bar, and the Board. The first amended complaint sought expunction of the records of his two felony convictions, his California disbarment, the disbarment by Treasury, and the

1. We do not doubt the correctness of the District Court's conclusion in the case at bar that the five defects did not reach constitutional proportions. That conclusion is given strength by the defeat of Silverton's appeal in the federal habeas proceedings as "legally frivolous."

2. The Clerk has not filed a brief or participated in the appeal. By letter to this court, the Clerk indicated he has no separate interest in the case, and is prepared to abide by the result of the appeal conducted by the other defendants.

revocation by the Board pursuant to the Civil Rights Act, 42 U.S.C. §§ 1981 and 1983.

The Bar and the Board each filed a motion for a dismissal of the amended complaint and actions thereunder. The District Court heard the motions, before any appearance was made by the Treasury, and granted the motions.

As to the Clerk, Bar, and Board, the District Court held that the complaint failed to state a claim upon which relief can be granted against those defendants because the alleged federal constitutional issues relating to the validity of Silverton's criminal conviction and the subsequent disciplinary proceedings resulting in Silverton's disbarment have been fully and fairly heard and determined against Silverton, and Silverton's action is, therefore, barred by the doctrine of prior adjudication (i.e., collateral estoppel and/or res judicata). As to the Treasury, the District Court, sua sponte, dismissed the action for the reason that Silverton's disbarment was clearly supported by the evidence of record; i.e. Silverton's felony convictions.

The District Court further held as to the Bar that it lacked subject matter jurisdication to review alleged federal constitutional defects in the final order of the Supreme Court of California disbarring Silverton from the practice of law under the "Theard Doctrine," **Theard v. United States,** 354, U.S. 278,

281, 77 S.Ct. 1274, 1276, 1 L.Ed. 2d 1342 (1957). Furthermore, the District Court held that the Bar and Board were not a "person" within the context of § 1983 and Silverton had not alleged that his criminal conviction or the subsequent disciplinary proceedings culminating in his disbarment were the result of racial discrimination within the context of § 1981.

The judgment appealed from followed.

ISSUES ON REVIEW:

[1] We are convinced that the following two issues are dispositive of this appeal.[3]

3. Silverton does not press his claims under 42 U.S.C. § 1981 or his argument that the APA is unconstitutional, both of which he presented before the District Court.

We are not disposed to discuss the various grounds stated by the District Court for the dismissals, other than the adoption of the Bar by prior adjudication. That ground and reason applies with equal force to all defendants-appellees, except Treasury.

There can be no doubt the District Court was foreclosed from subject matter jurisdiction to grant any relief to Silverton from his California State Bar disbarment under **Theard v. United States,** 354 U.S. 278, 77 S.Ct. 1274, 1 L.Ed. 2d 1342 (1957). **Brown v. Board of Bar Examiners,** 623 F.2d 605, 609-10 (9th Cir. 1980), citing **McKay v. Nesbitt,** 412 F. 2d 846 (9th Cir.), cert. denied, 396 U.S. 960, 90 S.Ct. 435, 24 L.Ed. 2d 425 (1969). We entertain grave doubts as to the correctness of the District Court's conclusion that the Bar and Board were not a "person" within the context of § 1983. See **Monell v. New York City Dept. of Social Services,** 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978). It is needless to pursue and meet either of those conclusions in this appeal.

(1) Did the District Court err in dismissing the amended complaint and cause with prejudice against Treasury?

(2) Did the District Court err in dismissing the amended complaint and cause with prejudice against the Clerk, the Bar, and the Board by the application of the doctrine of res judicata and/or collateral estoppel?

DISCUSSION:

Issue 1 (Treasury):

We emphasize that at the time the District Court dismissed the action against Treasury, not then appearing, it had before it two of the state appellees' motions to dismiss, as well as various exhibits filed in support of said motions and Silverton's opposition thereto. The record here reveals that in addition to the various court decisions upholding Silverton's disbarments and convictions, the District Court had before it the transcript of the State Habeas 1 evidentiary hearing, the transcript of the hearing before the California State Bar, and the Clerk's transcript which included a transcript of the preliminary hearing.

[2] A District Court may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants or where claims against such defendants are

integrally related. **Rogers v. Fuller,** 410 F.Supp. 187, 192 (M.D.N.C. 1976); **Walner v. Friedman,** 410 F. Suff. 29, 34 (S.D.N.Y. 1975); **Piedmonte v. Chicago Board Options Exchange, Inc.** 405 F.Supp. 711, 718 (S.D.N.Y. 1975).

[3] We are satisfied that Treasury's disbarment of Silverton pursuant to the provisions of 31 C.F.R. Part 10 (Treasury Department Circular 230) was not arbitrary, capricious nor an abuse of discretion, but, on the contrary, the decision was fully supported by substantial relevant evidence.

The District Court did not err in sua sponte dismissing the first amended complaint and action, with prejudice, as against Treasury. (See the discussion under Issue 2).

Issue 2 (Clerk, Bar and Board):

Res Judicata-Collateral Estoppel:

In order for Silverton to prevail against any of the defendants-appellees, it is necessary for him to void by collateral attack, through the vehicle of these §1983 proceedings, the two felony convictions in the California state court and the disbarments and revocation flowing therefrom. The Supreme Court's decision in **Allen v. McCurry** — U.S.—, 101 S. Ct. 411, 66 L.Ed. 2d 308 (1980), is apparently adverse to Silverton's success. How-

ever, the difference in the procedural and factual status between **Silverton** and **McCurry** require further comment and clarification rather than a direct application of and reliance upon, the ultimate holding in **McCurry.** The question of what collateral estoppel effect to give to a state habeas proceeding has apparently never been explicitly addressed by this circuit, nor by any other circuit in recent years. The interaction of § 1983, habeas corpus and the prior litigation doctrine has been an area of divergent paths among the circuits.

McCurry, as well as most of the cases in this area, differs from **Silverton** in that **McCurry** involved a substantive issue which was decided on the merits at the original trial in question. In contrast, **Silverton** concerns claims about the conduct of the trial—issues which were not raised during the trial or on direct appeal. Thus, the only state court decisions on these claims were reached on state collateral review in State Habeas 1. Whether viewed either as a question of the collateral estoppel effect of a state habeas decision, or of a claim which could have been brought in a post-trial motion or on direct review but was not, the facts of

Silverton distinguish it from **McCurry** for purposes of faithful analysis.[4]

This circuit recently expressed a great deal of accommodation for the criminal defendant who seeks to have his or her federal constitutional claims litigated in federal court. **Johnson v. Mateer,** 625 F.2d 240 (9th Cir. 1980). Although the **McCurry** decision effectively overruled **Johnson** on the facts of that case (where a Fourth Amendment claim decided against defendant in a state criminal trial was raised as a basis for a §1983 claim), the **McCurry** court twice expressly noted that it was not addressing the question of claims which could have been brought at trial but which were not. **McCurry,** 101 S.Ct. at 415 nn.5 & 10. The court did find, however, that there is no right to have an unencumbered opportunity to raise a federal claim in federal court. Nonetheless, in deciding that the traditional concepts of collateral estoppel apply to §1983 actions based on issues decided in a state criminal trial, the court neither approved nor dis-

4. Silverton's first claim could not have been presented on the merits at his criminal trial or in any timely post-trial application because he had not discovered the grounds therefor for more than a year after the trial. We are not convinced by the record on appeal that Silverton could not have presented his second and third claims by any post-trial motion. There is no need to pursue the matter because the three claims were presented and considered in State Habeas 1. Therefore, we limit our review to the procedures utilized in State Habeas 1.

approved the circuit court decisions which have held that claims which could have been raised but were not are not precluded in §1983 actions by collateral estoppel. **Id.** at 416 n.10. This deliberate action by the Supreme Court to reserve the question now before us here indicates that the courts of appeals are free to reach their own conclusions, guided by the principles of **McCurry.**

However, we are satisfied from the record on appeal and for the reason later delineated that it is not necessary for this court to meet the dangling question in this case.

We look now to the effect of Silverton's State Habeas 1 proceedings upon his §1983 claims. Silverton's first constitutional infringement claim, that the trial court judge relied on extrajudicial information to convict Silverton and thus denied him a "fair trial" (presumably a procedural due process argument), could not have been raised by post-trial motion or on direct review. It appears that this claim is based upon an affidavit sworn and given to Silverton by the attorney for a co-defendant at the trial over a year after the fact. It states that the judge had told his attorney that the judge had received so many calls about the bad things Silverton had done, he just had to find him guilty.

The due process claim, along with the other two claims, was presented in the State Habeas 1 court

which held an evidentiary hearing. This presents the question, which has not been specifially decided by any circuit, viz: may a §1983 claim be precluded by a prior adjudication on that claim in a state habeas proceeding?

[4] The doctrines of prior adjudication finality are applied to protect adversaries from "the expense and vexation attending multiple lawsuits, [conserve] judicial resources, and [foster] reliance on judicial action by minimizing the possibility of inconsistent decisions." **Montana v. United States,** 440 U.S. 147, 153-54, 99 S.Ct. 970, 974, 59 L.Ed. 2d 210 (1979).

[5] The existence of a full and fair hearing on constitutional claims under federal standards is the keystone of the unclimbable wall protecting the finality of a prior state habeas adjudication. In its absence, that wall crumbles. **Townsend v. Sain,** 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed. 2d 770 (1963).

[6] As stated, an evidentiary hearing was held upon Silverton's State Habeas 1 petition in a California Superior Court, presenting the same claims as presented to the District Court in the case at bar. There is no reason to conclude that a decision by a state habeas court, after a full and fair hearing, should be considered to have any less weight or credibility than a state court decision in a direct action. If issues are presented to a habeas court, it

can be assumed to apply the appropriate constitutional standards and reach a decision just as would be done on direct review. **Cf. Stone v. Powell,** 428 U.S. 465, 493-94 n. 35, 96 S.Ct. 3037, 3051-52, 49 L.Ed. 2d 1067 (1976) (confidence in state court judges to correctly decide federal Fourth Amendment issues in direct actions and on direct review).

[7] **McCurry** applied collateral estoppel in a §1983 action 101 S.Ct. at page 420 in spite of the different contexts in which the claims were presented to the District Court and to the California court, respectively, viz. in the §1983 action as a basis for damages and in the California court, as a basis for suppression of evidence. But see **McCurry** at 425 (Blackmun, J., dissenting). Here, however, the context of the issues is more similar. In all three habeas proceedings and the § 1983 actions, Silverton basically seeks to have his two convictions invalidated. Although he seeks relief by release from custody in three instances and relief by the expunction of adverse records in the fourth, the posture of the identical constitutional infringement issues in each instance is the same. The mere difference in the form of relief is unimportant. Moreover, the Supreme Court has hinted that the decision of a state habeas proceeding will have collateral estoppel on a subsequent § 1983 action. Justice Brennan pondered the consequences of

this situation in his dissent in **Preiser v. Rodriguez,** 411 U.S. 475, 511, 93 S.Ct. 1827, 1847, 36 L.Ed. 2d 439 (1973) (Brennan, J., dissenting). This court more explicitly suggested this result a few months later when it stated that when a § 1983 action for damages was brought by a prisoner in federal court, and restoration of good time credits was simultaneously sought in state court (presumably a state habeas action), "[o]ne would anticipate that normal principles of **res judicata** would apply in such circumstances." **Wolff v. McDonnell,** 418 U.S. 539, 554 n. 12, 94 S.Ct. 2963, 2973 n.12, 41 L.Ed. 2d 935 (1974). In sum, we hold that because of the nature of a state habeas proceeding, a decision actually rendered should preclude an identical issue from being relitigated in a subsequent § 1983 action if the state habeas court afforded a full and fair opportunity for the issue to be heard and determined under federal standards.

[8] Under the direction of **Townsend,** the federal habeas court had to assure itself that the fact-finding proceedings used in State Habeas 1, where the facts relevant to Silverton's three claims were heard and determined, were adequate to afford Silverton a full and fair hearing on the claims and were supported by the record as a whole. If it had doubted the fairness or adequacy of the state hearing, the federal habeas court would have been

required to hold an evidentiary hearing on the claims. There appears to be no reason why there should be any material difference between the full and fair hearing standard dictated by **Townsend** and the standard for a full and fair hearing to enable collateral estoppel to be applied to prior state habeas proceedings. Both are concerned with the ability of the present court to accept the findings of a prior court. Therefore, if a state hearing is a "full and fair hearing" for federal habeas purposes, this is also sufficient to mandate that collateral estoppel be applied.

The District Court did not hold an evidentiary hearing after its review of the massive record of the prior state habeas proceedings, particularly the record of State Habeas 1. We think that the District Court is entitled to no less degree of esteem and confidence to correctly follow and ascribe to the mandates of **Townsend** in deciding Fifth and Sixth Amendment issues as that attributed to state court judges. **Stone v. Powell,** 428 U.S. at 493-94 n. 35, 96 S.Ct. at 3051-52 n. 35.

[9] We conclude it is manifest from the District Court's dismissal of the first amended complaint and action thereunder on the stated grounds, without an evidentiary hearing, that the District Court was satisfied beyond any doubt that Silverton had received a full and fair hearing in State Habeas 1 on

all his constitutional claims and procedural and evidentiary defects.

The District Court did not err in dismissing the amended complaint and action thereunder, with prejudice, as to Treasury, Clerk, Bar, and Board.

The judgment entered by the District Court on May 9, 1978 is AFFIRMED.

APPENDIX
"B"

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FILED
FEB. 18 12:45 PM '78
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD R. SILVERTON,

Plaintiff,

vs.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, THE STATE BAR OF CALIFORNIA, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Defendants.

FIRST AMENDED COMPLAINT
No. 77 4656 AAH

(1) For review of order of the Department of the Treasury of the United States Government
(2) To declare on federal constitutional grounds a State court conviction invalid, and for a mandatory injunction to have it expunged from the:
(a) official records of the State of California
(b) official records of the State Bar of California
(c) official records of the California State Board of Accountancy

Plaintiff, RONALD R. SILVERTON, respectfully presents two separate causes of complaint arising out of the same series of occurrences which contain questions of law and fact common to all of the defendants herein:

I. Proceedings to review the order of the Department of the treasury of the United States Government:

1. On the 8th day of April, 1976, the Director of Practice of the United States Treasury Department issued and subsequently served on plaintiff, a complaint providing that the Secretary of the Treasury, after due notice and opportunity for hearing, disbar or suspend from practice before the Internal Revenue Service plaintiff who had been convicted of a felony of conspiracy to defraud and of solicitation to commit grand theft for which he was sentenced

to imprisonment in the State Prison. Specifically, the Director of Practice relied upon 31 C.F.R. § 10.50 which provides, in pertinent part, that the Secretary of the Treasury, after due notice and opportunity for hearing, may suspend or disbar from practice before the Internal Revenue Service any Attorney, Certified Public Accountant, or enrolled agent shown to be incompetent, disreputable or who refuses to comply with the rules and regulations of Part 10, Title 31 of the Code of Federal Regulations.

2. The complaint alleged plaintiff's conduct was in derrogation of the afore-stated Code of Federal Regulations by virtue of his having been convicted of the afore referred to offenses and as a result thereof having been disbarred from practice as an Attorney and suspended from practice as a Certified Public Accountant.

3. Plaintiff filed his answer to the said complaint admitting the disbarment and suspension because of the convictions of ~~have~~ violated Sections 182.4 and 653(j) of the California Penal Code, which are felonies, but argued that his conduct did not constitute a violation of the offenses and that he did not have a fair trial.

4. Thereafter, on May 7, 1977, in the Federal Court House at Los Angeles, California, the matter came on for hearing before Kenneth L. Travis, Administrative Law Judge, from the Bureau of

Alcohol, Tobacco, and Firearms, Department of the Treasury. At said hearing, plaintiff represented himself, and the Director of Practice, who was the complainant, was represented by an attorney employed by the Department of the Treasury.

5. After hearing the evidence, receiving exhibits and briefs from both parties, the Administrative Law Judge ruled that plaintiff was not guilty of the crimes of which he had been convicted and in effect that he did not obtain a fair trial. He stated:

> "If Mr. Silverton had elected to try the case before a jury, I am convinced beyond any doubt whatsoever that he would now be a practicing attorney and a CPA in California and this instant action would never have commenced... I find sufficient doubt running through this entire record . . . if I were the Governor of the State of California, I would have a detailed investigation made of the case before deciding whether or not to grant Mr. Silverton a pardon."

The Administrative Law Judge then ordered that plaintiff be suspended from practice before the Internal Revenue Service for a period of three months.

6. Thereafter, counsel supporting the complaint appealed to the Secretary of the Treasury from the Administrative Law Judge's official decision and said appeal came before Robert H. Mundheim,

General Counsel, pursuant to Treasury Department Order No. 175-1 (September 13, 1963), in Treasury Department Order No. 190 (Revision 14) (July 1, 1977), which authorized the General Counsel to perform the functions of the Secretary of the Treasury relating to the office of the Director of Practice.

7. Said General Counsel reviewed the record, including the briefs on appeal, and issued its Opinion on November 1, 1977, reversing the initial decision and disbarring plaintiff from practice before the Internal Revenue Service on the basis that plaintiff, in violation of Section 10.51(a) of Treasury Department Circular No. 230, had been convicted of two offenses involving dishonesty, and that plaintiff, in violation of Section 10.51(g) of Treasury Department Circular No. 230, had been disbarred from the practice of law by the Supreme Court of the State of California, and further that a Certificate of Practice as a Certified Public Accountant in the State of California had been revoked.

8. Under date of November 4, 1977, the Director of Practice, Leslie S. Shapiro, issued a letter to plaintiff stating:

> "... the Decision (of the General Counsel, as aforestated) constitutes the final administrative action in the matter. Effective November 1, 1977, you are disbarred from practice before the Internal Revenue Service."

9. Venue of this petition is based on the fact that plaintiff has his office, principal place of business and residence within this District and that this complaint is being filed within a reasonable time from the date of said order issued by the Director of Practice, Leslie S. Shapiro.

10. Venue of this complaint arises under 5 U.S.C. § 703. The aforestated section provides for venue of proceedings under the Administrative Procedure Act.

11. The General Counsel acting on behalf of the Secretary of the Treasury in functions relating to the Office of Director of Practice erroneously and without substantial evidence, reversed the initial decision, as afore set forth, of the Administrative Law Judge of the Department of the Treasury.

12. Said Decision of the General Counsel, Robert H. Mundheim, reversing the initial Decision of the Administrative Law Judge, Kenneth L. Travis, as aforestated, is without support in the evidence and contrary to the evidence.

13. The Administrative Procedure Act, if it is to be construed as disbarring plaintiff from practice before the Internal Revenue Service, is unconstitutional as being arbitrary, capricious, and unreasonable, beyond the powers of the Congress and violative of the 14th Amendment of the Constitution of the United States.

II. Proceedings as to complaint against defendants John J. Corcoran, County Clerk and Clerk of the Superior Court of California, County of Los Angeles; and the State Bar of California; and the California State Board of Accountancy:

1. Plaintiff is, and was at all times mentioned within this complaint, a resident of the County of Los Angeles, State of California. On April 5, 1972, plaintiff was convicted of the felonies of conspiracy to defraud in violation of California Penal Code §182.1, §182.4, and California Insurance Code §556; and of solicitation of a crime in violation of Penal Code §653f. As a result of these convictions, plaintiff was sentenced to imprisonment in the State Prison of the the State of California and did in fact serve his sentence of imprisonment and parole thereafter. At this time, plaintiff has completely discharged his penal sentence.

2. On January 16, 1958, the California State Board of Accountancy, an instrumentality of the State of California, issued to plaintiff a certificate as a Certified Public Accountant and plaintiff practiced this profession as a means of livelihood until he was disbarred and thus prevented from so doing on December 7, 1974, to be effective January 1, 1975 by the California State Board of Accountancy. Plaintiff's disbarrment was solely as a result of the conviction of the felonies stated in Paragraph 1 above. This disbarrment was by the California State

Board of Accountancy, an instrumentality of the State of California.

3. On June 11, 1958, plaintiff was admitted to the practice of law within the State of California by the State Bar of California, an instrumentality of the State of California, and at all times thereafter did practice this profession as a means of livelihood until he was disbarred and thus prevented from so doing on July 3, 1975. Plaintiff's disbarrment was solely as a result of the conviction of the felonies set forth in Paragraph 1 above. Plaintiff's disbarrment was by the State Bar of California, an instrumentality of the State of California.

4. Defendant John J. Corcoran, as County Clerk and Clerk of the Superior Court of California, County of Los Angeles, and in that capacity, is in charge of maintaining and keeping records of the judgment of conviction of plaintiff in Los Angeles County Superior Court Case No. A281235, which occurred on or about April 5, 1972, and which was affirmed by the Court of Appeals, Second Appellate District, State of California on or about October 31, 1972. This conviction was on the charges of violation of §182.4 and 653(f) of the California Penal Code. That plaintiff has been completely discharged from the penal sentence, including parole therefrom, incurred because of the conviction set forth in Paragraph 1 above. However, the maintenance of plaintiff's criminal records in connection with said

conviction by defendant John J. Corcoran continues to operate to the detriment of plaintiff.

5. Defendant, State Bar of the State of California, is an instrumentality of the State of California that determines who can practice law within the State of California. The State Bar of California maintains a record on plaintiff preventing plaintiff from practicing law within the State of California solely because of the conviction of plaintiff as aforestated in Paragraph 4 above.

6. Defendant, The California State Board of Accountancy, is an instrumentality of the State of California that determines who may practice as a Certified Public Accountant within the State of California. The California State Board of Accountancy maintains a record on plaintiff that prevents plaintiff from practicing as a Certified Public Accountant within the State of California solely as a result of the conviction of plaintiff as aforestated in Paragraph 4 above.

7. The conviction of plaintiff as set forth in Paragraph 1 and Paragraph 4 above is invalid for lack of due process under the 14th Amendment of the Federal Constitution for the reason that such conviction is the product of State proceedings in which plaintiff did not obtain a fair hearing as mandated by the Federal Constitution; and that plaintiff's guarantees under the 6th Amendment to the Federal Constitution, the right of trial by jury and the right to

confront witnesses, as applied to States by the 14th Amendment to the Federal Constitution, were infringed upon. These substantial violations of plaintiff's Constitutional rights resulted in the conviction set forth in Paragraphs 1 and 4 above. These substantial violations of plaintiff's Constitutional rights with respect to said convictions were as follows:

(a) The trial judge to whom the matter of plaintiff's guilt or innocence was submitted in Los Angeles Superior Court Case No. A281235, the Honorable Judge William A. Caldecott, considered in determining said guilt or innocence, contentions brought to his attention outside of the courtroom and outside of the presence of plaintiff and his counsel. The nature of these contentions were unknown to plaintiff or his counsel and were of a nature opposite to plaintiff's protestations of innocence with regard to the charges to be considered by Judge Caldecott.

(b) Plaintiff was induced by Judge Caldecott, the trial judge in Los Angeles Case No. A281235, to waive a jury and his right to confront witnesses. This inducement was caused by statements of opinion on plaintiff's guilt that were made by said trial judge to plaintiff's counsel and repeated by plaintiff's counsel to plaintiff. Said statements were to the effect that said trial judge did not consider the plaintiff guilty of the charges. Immediately after these words were stated and as a direct result of

these words, plaintiff waived his right to a trial by jury and to confront witnesses and submitted the matter of his guilt or innocence to be decided by Judge Caldecott. Said Judge Caldecott, contrary to the statements of his belief in the innocence of plaintiff, and with there having been no additional evidence admitted into court regarding the issue of plaintiff's guilt or innocence other than that that had been submitted prior to the expression of opinion by Judge Caldecott to plaintiff's counsel, said Judge Caldecott found plaintiff guilty and sentenced him to the State Penitentiary.

8. The effect of the conviction of plaintiff, as aforestated, and the actions of defendants John J. Corcoran, the State Bar of California, and the California State Board of Accountancy, in maintaining the records of plaintiff's conviction, is to deprive under color of State law, statute, regulation, custom, and usage, the rights, privileges, and immunities secured by the Constitution and the laws of the United States, viz. 42 U.S.C. §1983 and 28 U.S.C. §1343(3) and the 14th Amendment to the Constitution of the United States providing for the equal rights of citizens and all other persons within the jurisdiction of the United States, and for a trial before an unbiased judge; and the 6th Amendment to the Constitution of the United States as applied to the states by the 14th Amendment providing for the right of trial by jury and the right to confront witnesses.

9. Jurisdiction of this complaint against defendants John J. Corcoran in his capacity as County Clerk and Clerk of the Superior Court of California, County of Los Angeles, and the State Bar of California, an instrumentality of the State of California, and the California State Board of Accountancy, an instrumentality of the State of California, is invoked under Title 28, U.S.C. §1343(3), this being a suit in equity authorized by law to be brought to redress the deprivation under the color of law, statute, regulation, custom and usage of a State of rights, privileges and immunities secured by the laws and Constitution of the United States, viz. §1981 and 1983 of Title 42 of U.S.C. and the 14th Amendment to the Constitution of the United States providing for equal rights of citizens and of all other persons within the jurisdiction of the United States and its application to the State of the 6th Amendment to the United States Constitution providing for the right to trial by jury and confrontation of witnesses in a criminal matter, as afore set forth more fully.

10. Venue of this complaint is based on the fact that all of the deprivations herein complained of occured as a result of the acts of defendants and records kept of the conviction of the plaintiff within the County of Los Angeles, State of California. And this complaint against the defendants John J. Corcoran, in his capacity as County Clerk and Clerk

of the Superior Court of California, County of Los Angeles, the State Bar of California, and the California State Board of Accountancy, is being filed within a reasonable time from the law permitting said type of complaint as enunciated by the United States Court of Appeals for the Ninth Circuit as set forth in the opinion of January 10, 1978 in the case of **Shipp v. Todd,** 77-1906.

WHEREFORE, plaintiff prays that this court assume jurisdiction of this proceeding and of the questions to be determined therein; and:

1. That it review said Decision and Order of Leslie S. Shapiro, Director of Practice, and issue its decree setting aside said Order of said Director of Practice against plaintiff;

2. That it order said Leslie S. Shapiro, Director of Practice, to issue to plaintiff a directive in accord with the findings and conclusions of the Administrative Law Judge of the Department of the Treasury, Kenneth L. Travis;

3. That it declare the State conviction of plaintiff in the case of The People of the State of California vs. Ronald Silverton, Los Angeles Case No. A281235, invalid on Federal Constitutional grounds;

4. That it direct John J. Corcoran, County Clerk and Clerk of the Superior Court of California, County of Los Angeles, to expunge from the court records in his possession the judgment of conviction of Ronald

R. Silverton in the case of People vs. Silverton, Los Angeles Case No. A281235, from the court's records;

5. That it direct the State Bar of California to expunge from the records in their possession any and all reference to the disbarrment of Ronald R. Silverton from the practice of law;

6. That it direct the California State Board of Accountancy to expunge from its records any and all reference of the disbarrment of Ronald R. Silverton to practice as a Certified Public Accountant from its records;

7. That it grant plaintiff such other and further order, decree and relief as may be just and proper to the court.

Respectfully submitted,

Dated: **February 13,** 1978

RONALD R. SILVERTON
In Pro Se
3600 Wilshire Boulevard
Suite 220
Los Angeles, California 90010
Telephone: (213) 381-7511

APPENDIX
"C"

DECLARATION UNDER PENALTY OF PERJURY
of
STEVEN L. DOBBS

STATE OF CALIFORNIA)
ss
COUNTY OF LOS ANGELES)

I, the undersigned, declare:

My name is Steven L. Dobbs. I am fifty-four years old. I reside at 3721 Blue Canyon Drive, Studio City, California. I am currently employed at the law firm of Thomas Reeks, 3630 Wilshire Boulevard, Los Angeles, California. The Telephone number there is 381-7511

I am an attorney, practicing law in the State of California, and licensed to do so. I have been licensed to practice law since 1956 and have practiced within the State of California since that time. Prior to that time I was a Deputy Sheriff, employed by the County of Los Angeles for approximately five years.

On April 5, 1972, at approximately 10:00 A.M., I appeared in Department 114 of the Superior Court of the State of California, County of Los Angeles,

before the Honorable William A. Caldecott, Judge presiding in Department 114. I was counsel of record for Betty Rose, one of the defendants in Case No. A-281235, a co-defendant with Ronald Silverton. At that time and place I submitted my client's case upon the Preliminary Transcript, as did Ronald Silverton, the co-defendant of Betty Rose. The matter was recessed until approximately 1:30 P.M., for the purpose of permitting the Judge to read the Preliminary Transcript to determine the guilt or innocence of Ronald R. Silverton and my client, Betty Rose. That at approximately 1:50 P.M. on April 5, 1972, Judge Caldecott did render a Decision, finding both Betty Rose and Ronald R. Silverton guilty of the two counts that they had submitted upon the transcript. That after the Judge made some brief remarks in regard to Ronald Silverton being found guilty, he left the bench and at his request, I followed him into his chambers. There was no one else present. Upon entering his chambers, I stated to the Judge,

> "How could you on the state of that evidence find Ronald Silverton guilty?",

to which he replied,

> "I have received so many phone calls informing me of so many acts of wrong-doing on the part of Silverton, that I had to do it. I think he was the real culprit in this trans-

action and if your client, Betty Rose, has a good record and a good report from the Probation Department, she will receive straight probation with no custody, and by sentence it will be a misdemeanor."

To those remarks by His Honor, I remarked,

"That's a deal, Judge."

This fact of my conversation with the Judge was not conveyed to Ronald R. Silverton until I was informed that the matter of People vs. Ronald R. Silverton, Case No. A-273492, before the Hon. Jack Gertson was reversed by the District Court of Appeals. This was approximately April, 1973. The reason for not revealing this fact to Ronald R. Silverton prior to that date was because if he stood convicted in the case before the Hon. Jack E. Gerson, then this fact of the conversation with Judge Caldecott was of little consequence and moot.

When requested by Ronald R. Silverton for an affidavit of these facts, I informed Ronald Silverton that I would make such affadavit upon the matter being sustained by the California Supreme Court in his favor, and having been informed on this date that the California Supreme Court upheld the decision of the District Court of Appeal in favor of Ronald R. Silverton, I therefore make this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California this 4th day of June, 1973.

STEVEN L. DOBBS

APPENDIX
"D"

April 4, 1972

Mr. Ronald Silverton
New County Jail
441 Bauchet Street
Los Angeles, California

Re: People v. Ronald Silverton, Betty Rose, and Gerard E. Stavish, No. A281235, L.A.S.C.

Dear Ron:

You have asked me to express my professional opinion as to the propriety of submitting the above entitled case on the transcript of the preliminary examination. I have concluded that the evidence is insufficient for the Court to find you guilty, or, if the Court finds you guilty, that the case would probably be reversed on appeal.

In coming to the above conclusion, I have read the transcript of the preliminary examination in the above-entitled case, the relevant code sections involved, and the points and authorities in support of the §995 motion submitted by Sharon Freis, and the responsive pleading by the Office of the District

Attorney. In addition, I have been present in Department 114 when the Judge has been hearing the motions pursuant to §995. Also, Mrs. Freis has related to me a conversation she had with the Judge in chambers to the effect that he may have made a different ruling than the Magistrate on this case. I also spoke briefly with the bailiff, who indicated that the Judge feels bound by the Magistrate's determination on a 995 motion, but when cases are submitted on the transcript he often finds people not guilty. The bailiff also seemed to indicate that the Judge felt that the case was one which should be submitted on the transcript.

I have prosecuted many 995 motions in the course of my practice, and when judges say the things that this Judge said when ruling on the 995 motion, it inevitably signals me to submit the matter on the transcript if the People consent. Particularly in cases where the Judge keeps repeating that the 995 motion does not go to reasonable doubt, in the way that this Judge has spoken, I anticipate a favorable ruling upon a submittal on the transcript. Thus, my conclusion is based upon both the insufficiency of the evidence, in my opinion, to sustain a conviction, and the remark of the Judge which indicated to me that he would find you not guilty if the matter were submitted on the preliminary transcript. If I did not have both of these factors, I would

hesitate to submit on the transcript. Furthermore, after reading the transcript, the Court reduced your bail from $25,000.00 to $1,000.00, a ruling which also indicates to me that the Court has problems with the evidence in the case. In view of these factors, it is my opinion that the Court would find you not guilty if the case was submitted upon the transcript of the preliminary examination with no further testimony by either side.

This opinion should not construed as a warranty that the Court would find you not guilty upon the procedure above proposed, but simply an opinion of counsel. The vagaries of the fact finding process, and the inter-relationship of the personalities of the participants in a criminal trial preclude any attorney, even the most experienced, from making a flat prediction as to a particular verdict. With the foregoing in mind, however, I would certainly advise you to submit on the transcript of the preliminary hearing.

Very truly yours,

ROBERT N. HARRIS, JR.

RNH: slc

I Roger K. Williams, CSR, official Court Reporter, do hereby certify this photocopy of Exhibit N in case NO. A273492 (as supplied to me by Mr.

Ronald Silverton), a 2 page letter from Mr. Robert N. Harris to Mr. Ronald Silverton dated April 4, 1972, to be a true and accurate reproduction of Defendant's Exhibit N in the above numbered case, as contained in the records of the County Clerk, I having made the comparison on this day, September 18, 1973.

APPENDIX
"E"

FILED

June 12, 1974

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Max Abrams
Attorney at Law
10850 Wilshire Blvd.
Los Angeles, Calif. 90024
Tel: (213) 879-5647

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD R. SILVERTON,

Petitioner,

vs.

CALIFORNIA ADULT AUTHORITY,

Respondent.

Case No. CV-74-1636-MML(T)

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner is being detained by Respondent within the confines of the State of California. See attached Exhibit A - "Conditions of Parole".

2. The conviction this Petition seeks to attack occurred on April 5, 1972 when the California Superior Court, in and for the County of Los Angeles, in case number A-281235 found Petitioner guilty of "conspiracy to defraud" - a violation of California Penal Code §182.4, and "solicitation to commit a felony" - a violation of California Penal Code §653f. The Petitioner had pled "not guilty" and had submitted the matter to a judge alone on the preliminary transcript. Petitioner did not testify at the trial. Petitioner was sentenced on April 5, 1972 to the "term prescribed by law"; which term was set by Respondent herein, Adult Authority, at three years.

3. Petitioner did timely appeal the conviction set forth in "2" above as follows:

To the Court of Appeal of the State of California, Second Appeallate District. On October 31, 1972, Division I of said Appellate District affirmed the judgement of conviction in criminal No. 21868 by a non-published opinion, attached hereto as exhibit B.

The grounds raised in the aforementioned appeal were:

a) The evidence of conspiracy to obtain money or property by false pretenses (California Penal Code §182.4) was not sufficient to sustain the verdict; viz: and is so totally devoid of evidentiary support as to violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

b) Sine a prima facie case of conspiracy was not proven, the hearsay statements of the codefendants should not have been admitted; viz: §1223 of the California Evidence Code as applied to your Petitioner in the above referred to appeal was not consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution; this is especially true since the statements were the sole evidence against your Petitioner herein (Appellant in the above referred to appeal).

c) Since the codefendants were unavailable as witnesses, the admission of their statements against your Petitioner herein, (appellant in the above referred to appeal) denied to him the right to confront witnesses; viz: §1223 of the California Evidence Code as applied to your Petitioner in the above referred to appeal was not consistent with the Confrontation Clause of the Sixth Amendment to the United States Constitution; and was further an abrogation of Petitioners rights under the Due

Process Clause of the Fourteenth Amendment to the United States Constitution and the decision of the United State Supreme Court in **Bruton v. United States** 391 U.S. 123, 20 L.Ed. 2d 476, 88 S.Ct. 1620.

d) There is a complete lack of evidence that Petitioner herein (Appellant in the above referred to appeal) solicited Rooker (the District Attorney Investigator who was the alleged solicitee) to commit the crime of grand theft, or any other crime; viz: and the conviction of your Petitioner herein of Solicitation to Grand Theft, a violation of California Penal Code §635f, is so devoid of evidentiary support as to violate the Due Process Clause of the Fourteenth Amendment to the United State Constitution.

On December 29, 1972 the California Supreme Court denied a timely filed Petition for Hearing on the matters raised by Petitioner in his appeal in the California District Court of Appeal (unsigned postcard saying "Petition for hearing denied" in case number 2d criminal 21868).

After the aforementioned denial by the California Supreme Court, your Petitioner herein timely filed an appeal with the United States Supreme Court - October term No. 72-1313. On May 21, 1973 it was dismissed: "The appeal is dismissed for want of a substantial federal question". The grounds were as follows:

a. That §1223 of the California Evidence Code was void in its application to Petitioner herein (Appellant therein) as contrary to the Confrontation Clause of the Sixth Amendment to the United States Constitution, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

b. That the acceptance into evidence of the extra-judicial statements of alleged co-conspirators did violate the rights of Petitioner herein (Appellant therein) under the: Confrontation Clause of the Sixth Amendment to the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the Decisions of the United States Supreme Court in **Bruton v. United States** 391 U.S. 123, 20 L.Ed. 2d 476, 88 S.Ct. 1620; & **Dutton v. Evans** (1970) 400 U.S. 74, 27 L.Ed. 2d 213, 91 S.Ct. 210.

c. That the acceptance into evidence of the file and contents described in the record of the Preliminary Hearing Transcript - indexed as People's Exhibit Number Six, violated the rights of your Petitioner herein (Appellant therein) under the: Confrontation Clause of the Sixth Amendment to the United States Constitution, Due Process Clause of the Four-

teenth Amendment to the United States Constitution, Privilege Against Self-Incrimination Provision of the Fifth Amendment to the United States Constitution, Right to Freedom From Unreasonable Search and Seizure Provision of the Fourth Amendment.

d. That the conviction of Appellant (Petitioner herein) of each count, was so totally devoid of evidentiary support as to each count, as to violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. On June 15th, 1973 a Petition for Rehearing of the appeal dismissed by the United States Supreme Court was timely filed with said court; said Petition for Rehearing was dismissed by the court on October 9, 1973.

4. Other than the aforereferenced appeals (supra) the following Petitions were filed with respect to the conviction that this Petition does attack:

On September 26, 1973 the Superior Court of the State of California, in and for the County of Sacramento in proceeding number 43317 "In the Matter of the Application of Ronald R. Silverton for a Writ of Habeas Corpus" ordered that the Los Angeles Superior Court give Petitioner an evidentiary hearing on the grounds in the Petition (see attached exhibit C - order of the Sacramento Superior Court). These grounds were:

a. In arriving at his judgment that your Petitioner herein was guilty, Judge William A. Caldecott considered contentions brought to his attention outside of the courtroom and outside of the presence of Petitioner (who was the Defendant, and who, along with advisory counsel, represented himself), and outside the presence of Petitioner's of record advisory counsel. The nature of these contentions were unknown to Petitioner and his advisory counsel. (See attached "prologue" exhibit - affidavit of Dobbs.)

b. Petitioner herein waived his right to a jury trial, and waived his right to confront the witnesses against him, and agreed to submit the matter of his guilt or innocence to the trier of fact, Judge William A. Caldecott, on the facts as set forth in the transcript of the preliminary hearing because your Petitioner believed that he had received from his advisory counsel, Sharon Freis, an accurate account of the remarks attributed to Judge Caldecott by Attorney Sharon Freis. These remarks were (unbeknownst to Petitioner) made in Judge Caldecott's chambers, not on the record, in a private interview between only Judge Caldecott and Attorney Sharon Freis, while the latter was acting in her capacity as ad-

visory counsel for Petitioner. These remarks took place during, or immediately after the consideration by Judge Caldecott of Petitioner's motion to dismiss the information in Case number A-281235 under California Penal Code §995, as to whether the facts as shown in the Preliminary Transcript were sufficient to hold the Petitioner to answer the information. Your Petitioner did not consent to said private interview, nor did he have any prior knowledge thereof. During this interview Judge Caldecott made statements to Mrs. Freis which she reasonably construed as an expression of an opinion on the case which was before him of Petitioner. When Mrs. Freis relayed these statements to Petitioner and to Petitioner's other co-advisory counsel, Attorney Robert Harris, these statements did induce Petitioner to waive a jury trial and his right to confront witnesses against him, and to submit the matter of his guilt or innocence to Judge Caldecott on the transcript of the Preliminary Hearing.

An evidentiary hearing was held on the aforeexpressed contentions of Petitioner in the California Superior Court, in and for the County of Los Angeles on January 9, 10, & 11 of 1974 (See attached exhibit D, Transcript of said hearing) - No. A-281235.

On January 11, 1974 the Honorable C.A. Bauer, Judge assigned, "Denied said Writ".

On April 3, 1974 a Petition for Writ of Habeas Corpus was filed in the Court of Appeal of the State of California, Second Appellate District on the same grounds raised in the Petition for Writ of Habeas Corpus in the Sacramento Superior Court (supra) and on which the evidentiary hearing was held in the Los Angeles Superior Court and on THREE ADDITIONAL grounds:

I. That the fact finding procedure employed by the State Court in the evidentiary hearing was not adequate to afford a full and fair hearing.

a. The Los Angeles Superior Court denied Petitioner's motion for discovery, timely and properly made for information that would have been helpful to Petitioner at the evidentiary hearing; while permitting to the District Attorney, who represented Respondent at the evidentiary hearing, discovery over the timely and proper objection of Petitioner. (See attached exhibits E, F, G, H, I, J).

b. Denial by the Los Angeles Superior Court, the Honorable James Kolts, of Petitioner's motion to disqualify said Judge James under the authority of California Code of Civil Procedure §170(5) from sitting as the trier of fact at the evidentiary hearing granted by the

Sacramento Superior Court. This erroneous denial denied Petitioner the same protection of California Code of Civil Procedure §170(5) permitted all other persons using the California Superior Court and compelled Petitioner to use the single summary challenge permitted under California Code of Civil Procedure §170.6 to disqualify Judge James Kolts from sitting as the trier of fact at the evidentiary hearing. This use of the single challenge permitted by California Code of Civil Procedure §170.6 to disqualify Judge James Kolts precluded Petitioner the option of its use on the Honorable C.A. Bauer, Judge assigned by the Los Angeles County Presiding Judge to hear the evidentiary hearing with regard to the Petition for Writ of Habeas Corpus in A-281235 (which attacks the same conviction that the instant petition does attack). (See exhibits K & L attached).

II. That the Petitioner did not receive a full, fair, and adequate evidentiary hearing in the State Court proceeding because:

a. The Court denied at the evidentiary hearing Petitioner's request to introduce evidence of the results of polygraph examinations of crucial witness, Steven Dobbs, though the reliability of the polygraph in general, and

its reliability in the specific examination of Mr. Dobbs was uncontradictedly demonstrated in the offer of proof. The offer of this testimony which was offered and excluded may be found in exhibit D, attached to this Petition, at page 192, commencing at line 3; the excluded testimony itself is attached to this Petition as exhibit M. Included within exhibit M are the points and authorities filed along with the written offer of proof of what each of the proffered witnesses would testify. Contained also in the offer of proof was Petitioner's offer to the court to submit the witness Dobbs to an examination by polygraph by any competent polygraph operator chosen by the court, that the results of said examination shall be entered into evidence; and that the cost of said examination shall be borne by Petitioner.

b) The Court denied at the evidentiary hearing Petitioner's request to introduce into evidence the testimony of Betty Rose and Dr. Gerard Stavish (the two "co-conspirators" in the proceeding here being attacked), to the effect that each had notified Petitioner herein just prior to Petitioners submission of the matter on the transcript that each would testify at any trial in a truthful manner that

would completely exonerate Petitioner. (See exhibit D attached, page 93, line 12-page 102, line 26; this is the offer of proof made at the evidentiary hearing).

c) Flagrant, calculated misconduct on the part of Respondent's counsel, the Los Angeles County District Attorney, which undoubtedly prejudiced the trier of fact at the evidentiary hearing against Petitioner: Over the objection of Petitioner, the counsel for Respondent, the Los Angeles County District Attorney, in bad faith asked a most scurrilous series of questions to a character witness for Petitioner (a California Superior Court Judge). These questions impugned the ethics, honesty, and integrity of the Petitioner. Though the District Attorney later withdrew the questions and apologized to Petitioner, admitting that he knew better than to ask questions he was not prepared to prove up the answers to (exhibit D, page 201, lines 13-24), even his apology contained inferences of the "bad character" of Petitioner designed to taint the trier of fact. The objectionable questions commence on page 194, line 5 of exhibit D and end with the withdrawal and apology on page 207, line 8 of exhibit D. However, Respondent's counsel even in admitting his bad faith

and withdrawing the questions presented to the trier of fact an ingenious and obviously preconceived rationale for his conduct - a tactic which not only reflects a preconceived attempt to protect the record, but also served to disarm the court against the appeal being made to its prejudice by the untrue statements (exhibit D, page 201, line 13-24). The blatant bad faith of the District Attorney can be further demonstrated by comparing his questions on page 199, line 4 of exhibit D to Petitioners character witness: "Are you aware that the case got past preliminary hearing and pretrial motions" with his questioning of Petitioner earlier in the evidentiary hearing (exhibit D, page 135, line 5 - page 136, line 21) wherein it was clear that the District Attorney clearly understood that the case referred to in his questioning of the Petitioner's character witness never got to the stage of a hearing on pre-trial motions.

III. That as a result of the many errors alleged under "I" and "II" above, Petitioner was denied Due Process of law in the evidentiary hearing granted on his Petition for Writ of Habeas Corpus in the State Court, and the factual determination was not supported by the record.

The Petition for Writ of Habeas Corpus on the above grounds, was denied on April 3, 1974 - number 24943 - by the Court of Appeal of the State of California, Second Appellate District. On April 11, 1974 a Petition for Hearing of the Petition for Writ of Habeas Corpus denied by the Court of Appeal on April 3, 1974 was filed in the California Supreme Court. It was denied on May 1, 1974 - 2d Crim. 24943.

On March 8, 1974 a Petition for Writ of Error Corem Nobis was filed in the Court of Appeal of the State of California, Second Appellate District. The ground was that: the foregoing of a trial by jury and the foregoing of Petitioner's right to confront witnesses and the submission of the matter to the court to decide Petitioner's guilt or innocence on the facts as shown by the preliminary transcript; and failure of Petitioner to protest the aforestated was the result of Petitioner's free will and judgment being overreached by certain representations told to Petitioner by Petitioner's attorneys: Attached exhibit D (transcript of the evidentiary hearing on Petitioner's Petition for Writ of Habeas Corpus) shows that Attorney Sharon Freis under oath does assert that in a private conference with Judge Caldecott he did state to her: that based on the preliminary transcript, "if he were the Committing

Magistrate he might not have held Silverton to answer" (exhibit D page 12, line 1-26). Attorney Sharon Freis did relate this to Petitioner and the other attorney for Petitioner, Robert Harris, who confirmed this on the witness stand at the evidentiary hearing on Petitioner's Petition for Writ of Habeas Corpus. Both attorneys of Petitioner, Sharon Freis and Robert Harris, then urged Petitioner to forego his right to a jury trial and his right to confront witnesses based on this statement made by Judge Caldecott to Sharon Freis, because if the Judge would not have "held you to answer if he had been Committing Magistrate, than obviously on the same facts (the preliminary transcript) he wouldn't find you guilty beyond a reasonable doubt". (exhibit D, page 47, line 14, and page 60 line 10). Petitioner did rely on the foregoing urgings of his attorneys (exhibit D, page 105, line 25 - page 106, line 18), and but for these urgings would not have foregone a jury trial nor his right to confront witnesses at a trial. Judge Caldecott did not deny the private conversation (which conversation was contrary to the Canons of Judicial Ethics adopted by the Conference of California Judges - number 15) but testified that he was only speaking generally (exhibit D, page 247, line 25 - page 248, line 5) and didn't know whether or not he made the statement that Attorney Sharon Freis said that he did, "it is

possible", he said (exhibit D, page 279, line 24 - page 280, line 8). Attorney Sharon Freis further testified at the evidentiary hearing about the private nature of the conference, and that its private nature was not mentioned to Petitioner. Petitioner presumed that it was a conference held in accordance with normal practice and that there was a record of it (exhibit D, page 16, line 9-13). Attorney Robert Harris, also representing Petitioner, testified that he also didn't know the private nature of the conference (exhibit D, page 47, line 26): and that he, Robert Harris, did not raise the issue of the judges representation to Attorney Sharon Freis on the appeal that he handled for Petitioner because he found no mention of the conference on the record when the record was received, and that Judge Caldecott denied his attempts to augument it (exhibit D, page 53, line 1-11).

The foregoing Petition for Writ of Error Corem Nobis was denied on April 3, 1974 - 2d Crim. 24942. Petitioner on April 11, 1974 filed A Petition for Hearing in the California Supreme Court with regard to the aforestated denial by the California Court of Appeal; this Petition for Hearing - 2d Crim 24942, People vs. Silverton - was denied on May 1, 1974.

5. Petitioner's claim of being held unlawfully is based on the following grounds and summarized

facts:

a. In arriving at his judgment that your Petitioner herein was guilty Judge William A. Caldecott considered contentions brought to his attention outside of the courtroom and outside of the presence of Petitioner (who was the Defendant, and who, along with advisory counsel, represented himself,), and outside the presence of Petitioner's of record advisory counsel. The nature of these contentions were unknown to Petitioner and his advisory counsel. (See attached "prologue" exhibit - affidavit of Dobbs).

b. Petitioner herein waived his right to a jury trial, and waived his right to confront the witnesses against him, and agreed to submit the matter of his guilt or innocence to the trier of fact, judge William A. Caldecott, on the facts as set forth in the transcript of the preliminary hearing because his free will and judgment were overreached by certain statements made by Judge Caldecott at a time and place that was improper. Attached exhibit D (Transcript of the evidentiary hearing on Petitioner's Petition for Writ of Habeas Corpus) shows that Attorney Sharon Freis under oath does assert that in a private conference with Judge Caldecott he did state to her: that based on the preliminary transcript, "if he were the Committing Magistrate he might not have held Silverton to answer" (exhibit D page 12, line 1-

26). Attorney Sharon Freis did relate this to Petitioner and the other attorney for Petitioner, Robert Harris, who confirmed this on the witness stand at the evidentiary hearing on Petitioner's Petition for Writ of Habeas Corpus. Both attorneys of Petitioner, Sharon Freis and Robert Harris, then urged Petitioner to forego his right to jury trial and his right to confront witnesses based on this statement made by Judge Caldecott to Sharon Freis, because if the Judge would not have "held you to answer if he had been the Committing Magistrate, than obviously on the same facts (the preliminary transcript) he wouldn't find you guilty beyond a reasonable doubt" (attached exhibit D, page 47, line 14, and page 60 line 10). Petitioner did rely on the foregoing urgings of his attorneys, and own feelings of the obvious truth of the argument (exhibit D, page 105, line 25 - page 106, line 18), and but for the statements of Judge Caldecott would not have foregone a jury trial nor his right to confront witnesses at a trial. Judge Caldecott did not deny the private nature of the conversation (which was contrary to the Canons of Judicial Ethics adopted by the Conference of California Judges - number 15) - exhibit D, page 247, line 25 - page 248, line 5 - and testified at the evidentiary hearing on Petitioner's Writ of Habeas Corpus that "it is possible" he made the statement that Attorney Freis testified that he did (exhibit D,

page 279, line 24 - page 280, line 8) viz: that he might not have held Silverton to answer on the facts as shown by the Preliminary Transcript if he had been the Committing Magistrate. These remarks were made during, or immediately after the consideration by Judge Caldecott of Petitioner's motion to dismiss the information in the case that this Petition seeks to attack, under California Penal Code § 995, as to whether the facts as shown in the Preliminary Transcript were sufficient to hold the Petitioner to answer the information. Your Petitioner did not consent to said private interview, nor did he have any prior knowledge thereof. Petitioner presumed that it was a conference held in accordance with normal practice and that there was a record of it (exhibit D, page 16, line 9 - 13). Attorney Robert Harris, also representing Petitioner, testified that he also didn't know the private nature of the conference (exhibit D, page 47, line 26); and that he, Robert Harris, did not raise the issue of the judge's representation on the appeal that he handled for Petitioner because he found no mention of the conference on the record when the record was received, and that Judge Caldecott denied his attempts to augument it (exhibit D, page 53, line 1-11).

c. Petitioner herein waived his right to a jury trial,

and waived his right to confront the witnesses against him, and agreed to submit the matter of his guilt or innocence to the trier of fact, Judge William A. Caldecott, on the facts as set forth in the transcript of the preliminary hearing because of a mistake of fact ie; Petitioner reasonably believed that Judge Caldecott had stated to Petitioner's Counsel Sharon Freis that he, Judge Caldecott, would not have held Petitioner to answer (viz: that there was no probable cause to believe that Petitioner committed the crime charged) if he, Judge Caldecott had been the Committing Magistrate at Petitioner's preliminary hearing. The facts supporting this ground are the same as given in "b" above, however, this ground presupposes that Judge William Caldecott did not intend the statement specifically to be applied to Petitioner's case, that as Judge William Caldecott stated under oath at the evidentiary hearing on Petitioner's Petition for Writ of Habeas Corpus: "he was only speaking generally" (exhibit D, page 247, line 25 - page 248, line 5).

The three grounds above given - a, b, & c - were considered by the Los Angeles Superior Court at the evidentiary hearing which was granted on Petitioner's Petition for Writ of Habeas Corpus (exhibit C, order of the Sacramento Superior Court). However, the fact finding procedure employed by

the State Court in the evidentiary hearing was not adequate to afford a full and fair hearing for the two reasons stated on page 6 above, lines 19 - page 7 above, line 11. Also the Petitioner did not receive a full, fair, and adequate evidentiary hearing in the State Court proceeding for the three reasons stated on page 7 above, line 14 - page 9 above, line 8. That as a result of the foregoing Petitioner was denied Due Process of law in the evidentiary hearing granted to consider the grounds given above (page 11, line 10 - page 13, line30).

6. None of the grounds listed in "5" above were previously presented to this court. Petitioner did not find out about any of the grounds in time to present any of them on any of the appeals taken. Petitioner's diligence in presenting his grounds given in "5" above was stipulated to by Respondent's attorney at the evidentiary hearing on Petitioner's Petition for Writ of Habeas Corpus: See exhibit D, page 111, line 1-10:

> "THE WITNESS: Well, I would like to introduce this for purpose of showing the time period, to show my diligence in putting in the petition for habeas corpus unless the District Attorney is willing to stipulate that for all purposes I am diligent.
>
> "MR. BRENNER: The Superior Court in

Sacramento ordered that we hear the matter. I don't think there is any question.

"THE WITNESS: I accept the stipulation that there is no question of my diligence in putting forth the writ."

7. Petitioner herein does not have any petition or appeal, other than this present petition, pending in any court, either state or federal.

8. The name and address of each attorney who represented Petitioner in the proceeding attacked here:

a. At arraignment and plea: Attorney Joseph Ball of the law firm of Ball, Hunt, Hart, Brown and Baerwitz - 120 Linden Avenue, Long Beach, Calif. 90801.

b. At preliminary hearing: Burton Marks, 9720 Wilshire Blvd., Beverly Hills, Calif. 90212.

c. At trial: Mrs. Sharon Freis, 11926 Santa Monica Blvd., West Los Angeles, Calif. and Robert Harris, 9200 Sunset Blvd. Suite 415, Los Angeles, Calif. and In Propria Persona.

d. At sentencing: Robert Harris, 9200 Sunset Blvd., Suite 415, Los Angeles, Calif.

e. On Appeal in the State court: Robert Harris, 9200 Sunset Blvd., Suite 415, Los Angeles, Calif.

f. On appeal to the United States Supreme Court

and all Petitions: In Propria Persona (except for the present one which is being presented by Attorney Max Abrams, 10850 Wilshire Blvd., Los Angeles, Calif. 90024).

WHEREFORE, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

The undersigned Max Abrams does certify that this Petition does contain all of the information required by the Local Court Rule 19 of the United States District Court Central District of California.
Date: **April 11, 1974**

_____

Max Abrams, Attorney for Petitioner

LIST OF EXHIBITS

"Prologue" exhibit	Declaration under penalty of perjury of Attorney Steven L. Dobbs.
Exhibit A	Conditions of Parole.
Exhibit B	Non-published opinion of Court of Appeal of the State of California, Second Appellate District, Division I affirming the judgement of conviction.
Exhibit C	Order of the California Superior Court, in and for the County of Sacramento.
Exhibit D	Transcript of Evidentiary Hearing on Petition for Writ of Habeas Corpus.
Exhibit E	Motions, affadavits, and Points and Authorities re: the deposing of prospective witnesses by Petitioner.
Exhibit F	Transcript of proceedings before the Los Angeles Superior Court on Petitioner's motion for discovery regarding the evidentiary hearing on the Petition for Writ of Habeas Corpus.
Exhibit G	Order of the Presiding Judge of the Los Angeles County Superior Court.

Exhibit H	District Attorney's motion and affidavit for discovery regarding the evidentiary hearing on the Petition for Writ of Habeas Corpus.
Exhibit I	Objections by Petitioner to District Attorneys motion for discovery regarding the Evidentiary hearing on the Petition for Writ of Habeas Corpus.
Exhibit J	Transcript of proceedings before the Los Angeles Superior Court on the District Attorney's motion for discovery regarding the evidentiary hearing on the Petition for Writ of Habeas Corpus.
Exhibit K	Notice of Motion, Statement of Judge's Bias and Prejudice and Points and Authorities, re: Petitioner's motion to disqualify Judge James Kolts pursuant to California Code of Civil Procedure §170(5).
Exhibit L	Certified copy of Clerk's minute order of Judge Kolt's order striking Petitioner's motion to disqualify Judge Kolts.

Exhibit M	Offer of Proof of the Reliability of the Polygraph Examination, both generally and specifically with regard to the examination of Steven L. Dobbs. And Points and Authorities submitted with said offer.

APPENDIX
"F"

FILED

MAR 31 1975

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED

MAR 31 1975

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD R. SILVERTON,

Petitioner,

vs.

CALIFORNIA ADULT AUTHORITY,

Respondent.

Case No. CV-74-1636-MML(T)
JUDGMENT

Pursuant to 28 U.S.C. § 636(b), the Court has reviewed the petition and the report and recommendation dated March 24, 1975, on file herein, and concurs with and adopts the findings and conclusions of the United States Magistrate.

IT IS ADJUDGED that the petition for writ of habeas corpus is denied.

IT IS ORDERED that the Clerk serve a copy of this judgment and of the report and recommendation of the United States Magistrate, by United States mail, on the petitioner, on the Attorney General of the State of California and on the Presiding Judge, Los Angeles Superior Court.

Dated: March 28, 1975

MALCOLM M. LUCAS
United States District Judge

FILED
MAR 31 1975

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD R. SILVERTON,

Petitioner,

v.

CALIFORNIA ADULT AUTHORITY,

Respondent.

Case No. CV-74-1636-MML(T)

REPORT AND RECOMMENDATION OF MAGISTRATE

This report and recommendation is submitted to the Honorable Malcolm M. Lucas, United States District Judge, pursuant to the provisions of 28 U.S.C. §636(b) and General Order No. 104-D of the United States District Court for the Central District of California.

On June 12, 1974, petitioner, on parole, filed a petition for writ of habeas corpus. At the time of the filing of the petition, petitioner was represented by counsel. Pursuant to General Order 104-D the case was referred to a Magistrate.

A return was ordered and filed. Petitioner filed a traverse.

On September 13, 1974, petitioner filed a substitution of attorneys, naming himself attorney of record. A supplemental brief was filed on August 27, 1974. Petitioner filed a supplemental travers on October 24, 1974.

The Magistrate has reviewed all of the pleadings, return, travers, supplemental return and traverse, pertinent portions of the transcript as well as other exhibits appended to the petition, Exhibit A submitted after the filing of the traverse, Exhibits A through

I attached to the return, which included the unpublished opinion of the California Court of Appeals and correspondence filed herein.

STATEMENT OF FACTS AND ISSUES PRESENTED

Petitioner seeks relief from his conviction of two counts: conspiracy to obtain money by false pretenses and to present a fraudulent insurance claim, California Penal Code §182.4; and soliciting another to commit or join in the commission of grand theft, California Penal Code §653(f). This judgment was rendered by a judge to whom the preliminary transcript had been submitted.

The petition, filed prior to the amendment of Local Rule 19(a)(1) and passage of General Order 144, presented a problem of interpretation of grounds presented, since petitioner enunciated no separate grounds for relief in his petition. However, respondent interpreted the following three grounds therefrom, which petitioner has not found objectionable in his traverse or supplement thereto which appear to state petitioner's claims:

1. When determining petitioner's guilt, the trial judge considered evidence that was not presented in open court.

2. Petitioner's jury waiver and his waiver of the right of confrontation were coerced in that the trial judge told his counsel that if he were the commit-

ting magistrate, he would not have held petitioner to answer, and this information was conveyed to petitioner prior to his waiver of the above rights.

3. Petitioner was denied the right to a fair evidentiary hearing in the state court for five reasons:

(a) The Court denied petitioner's introduction of the results of a polygraph examination.

(b) The Court denied petitioner's request to call his co-conspirators of the above charges as witnesses.

(c) The prosecutor engaged in misconduct.

(d) The Court denied petitioner's request for depositions of witnesses; and

(e) The Court should have disqualified itself because of bias.

ANALYSIS OF THE ISSUES PRESENTED

I

At the onset, one must address respondent's argument that petitioner has not exhausted his state remedies.

Petitioner raised the above-mentioned contentions before the California Supreme Court in his petition for hearing on his habeas corpus petition (Petition, p.9) and on his petition for hearing from the denial by the California Court of Appeal, of his petition for **corma nobis** (Petition, p.11). In both instances petitioner received "postal card denials".

Respondent, relying upon **Conway v. Wilson,**

368 F.2d 485, argues that "the California Supreme Court may not have denied the petition on the merits," (Return, p.5) citing procedural deficiencies in petitioner's statement of grounds for relief.

Respondent's position, and that of the **Conway** ruling, has been overruled by **Harris v. Superior Court,** 500 F.2d 1124, (9th Cir. 1974). **Harris** holds that when the California Supreme Court denies a habeas corpus petition without opinion or citation, the exhaustion requirement is satisfied. **Id.,** at 1128-1129.

The Court stated "there is now no reason to suppose that a postcard denial without opinion is indicative of anything but a decision on the merits," **Id.,** at 1128-1129. Therefore, respondent's arguments must fail, and it appears that the state courts have had an opportunity to rule on petitioner's contentions.

II

Petitioner's first and second contentions, raising issues of the trial judge's impropriety in considering facts not presented to him in open court, and petitioner's waiver of confrontation and jury rights based on information conveyed by his counsel that the judge would not have held petitioner over to answer, may be resolved together. The merits of both points have been raised and heard at the State's evidentiary hearing on petitioner's applica-

tion for writ of habeas corpus (Rep. Tr. 293, 304). Indeed, this evidentiary hearing was ordered for the very purpose of hearing the above two grounds. (Petition, pp. 4-6).

Under 28 U.S.C. §2254(d), the written findings of the state court are presumed correct, unless petitioner challenges that the fact finding procedures were unfair and that the merits of the factual dispute were not resolved.

Petitioner has not brought his objections within the purview of the §2254(d) subsection. The mere recapitulation of testimony favorable to petitioner's position, and adverse to that of the decision rendered by the Court, does not meet the burden required by the statute.

Rather, the record reflects a full, fair, and adequate hearing at which petitioner, an attorney of twenty years, ably represented himself. It also shows that the detemination of the Court was made on the merits after a full development of the material facts. The facts found by the trial judge were those set forth in the transcript, and came from "the testimony of witnesses," "counsels' arguments," "the documents, (including) . . . the moving papers for writ of habeas corpus," and the judge's own notes. (Rep. Tr. 351-352).

In short, the record as a whole does not rebut a presumption of correctness. The record fairly supports the determination of the trial judge. **Selz v. State of California,** 423 F. 2d 702, 703 (9th Cir. 1970). No further evidentiary hearing is required under such circumstances, **Townsend v. Sain,** 372 U.S. 293 (1963). By federal standards, petitioner's argument also fails.

III

Petitioner's enunciation of errors, allegedly denying him a fair evidentiary hearing in state court, begins with the court's refusal to permit him to introduce the polygraphic examination of his leading witness. The law is clear that "mere errors in the rejection of evidence are not subject to review by writ of habeas corpus." **Charlton v. Kelly,** 221 U.S. 447, 457 (1913). See also, **Lisenba v. California,** 314 U.S. 216, 228 (1941) and **Rogers v. Peck,** 199 U.S. 425, 434 (1905). Rather petitioner must allege an error of constitutional magnitude, which he has not done.

Furthermore, there is law in this circuit to the effect that there is no abuse of the trial court's discretion in rejecting the introduction of polygraph evidence. **Polakoff v. United States,** 489 F.2d 725, 727 (C.D. Cal, 1974). Rejection of such evidence has been justified where it appeared that the trial judge would not have believed the witness irrespective of

the polygraph test, **United States v. Bentham,** 470 F.2d 1367, 1368 (9th Cir. 1972), or where "the amount of reliance upon them would not overcome the conclusions reached upon hearing conflicting evidence." **Esso Transport Company, Inc. v. Terminales Maracaibo,** 356 F. Supp. 1363, 1367 (9th Cir. 1973). Finally, this jurisdiction has stated, "the error, if any, in rejecting the evidence would be harmless under Rule 52(g), FRCP." **United States v. Bentham, supra,** 1368.

In sum, petitioner's allegation of a mere evidentiary issue a denial of which has consistently been treated by this circuit as a matter within the trial court's discretion must fail.

Petitioner secondly argues that he was unconstitutionally prohibited from producing the testimony of his two co-conspirators, who would have testified to his innocence. At the evidentiary hearing petitioner contended the two witnesses would have testified to petitioner's state of mind at the time the case was submitted on the preliminary hearing transcript. (Rep. Tr. pp.93-100). The above issue had already been addressed in the testimony of three of petitioner's witnesses. (Rep. Tr. 17-18; 45-50; 104-106). Although petitioner denies the evidence he sought to introduce "would be more than cumulative" (Traverse, p.14) petitioner does not substantiate this argument. He articulates no new and material

evidence not previously raised, nor does he argue that he was "prejudiced by a failure of any particular witness to take the stand." **Bryant v. Cox,** 312 F. Supp. 218 (W.D. Pa. 1970).

In short, petitioner has again raised "a question of the propriety of the trial judge's action in the admission of evidence", **Lisenba v. California, supra,** at 28, over which this Court exercises no review. Petitioner makes an inadequate showing in constitutional dimensions as to the nature of the proferred evidence. Thus, this contention also lacks merit.

Petitioner's third contention is that misconduct on the part of the deputy district attorney denied him right to a fair evidentiary hearing.

The conduct to which petitioner objects concerns the prosecutor asking petitioner's character witness on cross-examination if he would have changed his opinion as to petitioner's truth and veracity if he had know that petitioner was selling babies illegally (Rep. Tr. 194-195). Petitioner objected, and the Court asked the prosecutor if he had any basis for the question. The district attorney first expressed his willingness to "bring that basis to the Court" through witnesses (Rep. Tr. 195) but later decided to withdraw the question "because I don't want to inconvenience people." (Rep. Tr. 196). The deputy district attorney later apologized to petitioner, ad-

mitting he knew better than to ask questions that he was not prepared nor willing to prove. Petitioner seemed to accept the apology. (Rep. Tr. 201).

Respondent correctly cites **Lisenba v. California, supra,** for the holding that "the Fourteenth Amendment leaves California free to adopt a rule of relevance" of collateral criminal conduct on the part of the accused. **Lisenba, supra,** at 236. Yet state law also holds that "such cross-examination (impeachment of character) must be conducted in good faith . . . 'An interrogator, in order to avoid a charge of misconduct, must be prepared to follow up with proof' questions if the existence of harmful facts should be denied." **People v. Perez,** 58 Cal. 2d 229, 238-239 (1962).

The instant prosecutor, who admitted, "Unless I was prepared to go forward at the time I asked the question, which I am obviously admitting I am not inclined to do at this time, I should never (have) mentioned it," (Rep. Tr. 201) manifestly demonstrated conduct falling far short of the "good faith" required of him.

The question remains: did prosecutorial misconduct deny petitioner's due process rights? Guideline toward resolving the question is set forth in **Lisenba v. California, supra,** at 236.

> "As applied to a criminal trial, denial of due process is the failure to observe that funda-

> mental fairness essential to the very concept of justice. In order to declare a denial of it we must find that absence of that fairness fatally infected the trial . . . "

It cannot be said that the prosecutor's admittedly improper question fatally infected petitioner's trial, for the trial judge "could be trusted to decide the guilt or innocence upon the factual basis of the charge." **Brown v. United States,** 222 F.2d 293, 298 (9th Cir. 1955). As declared in **Iva Ikuko Toguri D'Aguino v. United States,** 192 F.2d 338, 367 (9th Cir. 1951):

> "Our system of jurisprudence properly makes it a matter primarily for the direction of the trial court to determine whether prejudicial misconduct has occurred. An appellate court will not review the exercise of the trial court's discretion in such a matter unless the misconduct and prejudice is so clear that it can be said that the trial court judge has been guilty of an abuse of discretion."

Thus, although petitioner has demonstrated an instance of prosecutorial misconduct, he has not shown that this incident "fatally infected" his trial so as to deny "fundamental fairness". **Lisenba v. California, supra,** Nor has he shown that the Court did not judiciously ignore the question and proceed on anything but "the factual basis of the charge." **Brown v. United States, supra.** Therefore, peti-

tioner's third contention must also fail.

Petitioner's fourth contention is that the Court erroneously denied his motion to take depositions of several witnesses. The Court did so on the ground that since habeas corpus is in the same nature as criminal proceedings, it did not have the power to order depositions taken unless the requirements of California Penal Code §1335, **et seq.** were met. (Petition, Exhibit F. pp. 18-21).

Clearly, the issue presented is one of state procedure. Like matters concerning the admissibility of evidence, state procedures are not the subject of habeas corpus review. Incorporating the text and authorities of this memorandum as to petitioner's first and second alleged errors at the evidentiary hearing, it appears clear that petitioner has again failed to present a federal question for which habeas corpus relief may issue.

Petitioner's final argument is that the state judge who conducted the evidentiary hearing should have disqualified himself because of bias. Petitioner cites no supporting facts whatsoever for this legal ground.

As indicated, since the petition was originally filed with counsel, petitioner was exempted from the requirement of using the petition form supplied by the Central District of California. Petitioner was not exempted from compliance with Local Rule 19.

Subsection (a)(5)(b) of Rule 19 provides that a petition set forth "in concise form, the grounds upon which petitioner bases his allegation that he is being held in custody unlawfully, (and) the facts which support each of these grounds. . . ."

Petitioner's utter failure to comply with the particularity required by Local Rule 19 renders his final contention without merit. See also, **Boehme v. Maxwell,** 423 F.2d 1056 (9th Cir. 1974).

From the preceding analysis of petitioner's contentions, it is apparent that petitioner's grounds for evidentiary hearing or issuance of the writ are insubstantial. The state court trier of facts has reliably found the relevant facts to be without error of constitutional magnitude. By federal standards petitioner received a fair hearing and fair trial. Further hearing is neither necessary nor appropriate. Petitioner has not met the burden of showing that he is being held in violation of the Constitution or laws of the United States.

The Magistrate recommends that petitioner's application for writ of habeas corpus be denied.

DATED: March 24, 1975

VENETTA S. TASSOPULOS
United States Magistrate

APPENDIX
"G"

THE DEPARTMENT OF THE TREASURY
OFFICE OF THE DIRECTOR OF PRACTICE
WASHINGTON D.C.

DIRECTOR OF PRACTICE,

Complainent,

vs.

RONALD R. SILVERTON,

Respondent.

COMPLAINT No. 76-5

AMENDED COMPLAINT

COMES NOW, the complainent, Leslie S. Shapiro, who, in his official capacity as Director of Practice, United States Department of the Treasury, files this Complaint pursuant to 31 C.F.R. 10.54 and 10.92, Section 10.54 and 10.92 of Treasury Department Circular No. 230 (Revised, July 1972), issued under authority of 31 U.S.C. 1026, and makes the following allegations of fact and charges of misconduct against the above named Respondent.

I

That Respodent was first enrolled to practice before the Internal Revenue Service as an attorney and a Certified Public Accountant on or about October 27, 1958; that Respondent at all times material hereto was eligible to practice before the Internal Revenue Service by virtue of 5 U.S.C. 500, and did so practice; and that Respondent's last address of record with the Director of Practice is 417 North Harvard Boulevard, Los Angeles, California 90004.

II

That Respondent is subject to disbarment or suspension from practice before the Internal Revenue Service by virtue of 31 C.F.R. 10.52, Section 10.52, Section 10.52 of Treasury Department Circular No. 230 (Revised, July 1972), by reason of disbarment from practice as an attorney by the Supreme Court of the United States, in violation of 31 C.F.R. 10.51(g), Section 10.51(g) of Treasury Department Circular No. 230 (Revised, July 1972), the circumstances of Respondent's offense being more particularly set forth hereinafter:

That Respondent was disbarred from practice as an attorney by the Supreme Court of the United States on or about January 19, 1976; and that such disbarment constitutes a disbarment or suspension from practice as an attorney by any Federal Court of record.

III

That Respondent is subject to disbarment or suspension from practice before the Internal Revenue Service by virtue of 31 C.F.R. 10.52, Section 10.52 of Treasury Department Circular No. 230 (Revised, July 1972), by reason of disbarment from practice as an attorney by the Supreme Court of California, in violation of 31 C.F.R. 10.51 (g), Section 10.51 (g) of Treasury Department Circular No. 230 (Revised, July 1972), the circumstances of Respondents offense being more particularly set forth hereinafter:

That Respondent was disbarred from practice as an attorney in the state of California by the Supreme Court of California on or about July 3, 1975; and that such disbarment constitutes a disbarment or suspension from practice as an attorney by any duly constituted authority of any State.

IV

That Respondent is subject to disbarment or suspension from practice before the Internal Revenue Service by virtue of 31 C.F.R. 10.52, Section 10.52 of Treasury Department Circular No. 230 (Revised, July 1972), by reason of disbarment from practice as certified public accountant by the California State Board of Accountancy in violation of 31 C.F.R. 10.51 (g), Section 10.51 (g) of Treasury Department Circular No. 230 (Revised, July 1972), the

circumstances of Respondent's offense being more particularly set forth hereinafter:

That Respondent was disbarred from practice as a certified public accountant in the state of California by the California State Board of Accountancy on or about December 7, 1974, effective January 21, 1975; and that such disbarment constitutes a disbarment or suspension from practice as certified public accountant by any duly constituted authority of any State.

V

That Respondent is subject to disbarment or suspension from practice before the Internal Revenue Service by virtue of 31 C.F.R. 10.52, Section 10.52 of Treasury Department Circular No. 230 (Revised, July 1972), by reason of his conviction of a criminal offense involving dishonesty, or breach of trust, in violation of 31 C.F.R. 10.51 (a), Section 10.51 (a) of Treasury Department Circular No. 230 (Revised, July 1972), the circumstances of Respondent's offense being more particularly set forth hereinafter:

That Respondent was convicted on one count of violating Section 182.4, California Penal code (conspiracy to obtain money by false pretences) and one count of violating Section 653(f), California Penal Code (Soliciting another to commit or join in the commission of grand theft); on or about April 5,

1972 by the Superior Court of California, Los Angeles County; and that said judgment was affirmed by the Court of Appeal, Second Appellate District, State of California on or about October 31, 1972; and that conviction of a violation of Sections 182.4 and 653(f) of the California Penal Code constitute a conviction of a criminal offense involving dishonesty or breach of trust.

Wherefore, the Complainant prays that Respondent be disbarred or suspended from further practice before the Internal Revenue Service, pursuant to the provisions of 31 C.F.R. 10.50 and 10.70, Sections 10.50 and 10.70 of Treasury Department Circular No. 230 (Revised, July 1972) issued under authority of 31 U.S.C. 1026.

_____

Leslie S. Shapiro
Director of Practice

Dated: this _____ day of _____ 1977, at Washington, D.C.

APPENDIX
"H"

THE DEPARTMENT OF THE TREASURY
OFFICE OF THE DIRECTOR OF PRACTICE
WASHINGTON, D.C.

DIRECTOR OF PRACTICE,

Complainant,

vs.

RONALD R. SILVERTON,

Respondent.

ANSWER No. 76-5

COMES NOW, the respondent, RONALD R. SILVERTON, and denies, avers, and alleges as follows:

I

Respondent has no information or belief that the disbarment referred to in paragraph II of the Complainant constitutes a disbarment or suspension from practice "by any duly constituted authority of any state" and does deny this allegation based on information or belief.

II

Respondent does deny the following parts of paragraph III of the Complaint:

a) That respondent was convicted of presenting a fraudulent insurance claim. That in fact this count was dismissed by the court.

b) That the facts underlying the charge of violation of Section 182.4 of the California Penal Code and Section 653(f) of the California Penal Code do not show a criminal offense involving dishonesty or breach of trust. Attached hereto as page 3 through 19 is an extract of arguments for another tribunal concerning the conviction. The exhibits referred to therein are available on request.

WHEREFORE, the respondent prays that respondent not be disbarred or suspended from further practice before the Internal Revenue Service.

Ronald R. Silverton
Respondent

Dated this 11th day of November, 1976, at Los Angeles, California.

[Silverton, a 44 year old attorney admitted to practice in the State of California in 1958, and practicing continuously therein until January 28,

1972, was convicted in 1972 of the crimes of criminal conspiracy (California Penal Code § §182.1 & 182.4) and solicitation of a crime (Penal Code §653(f).] On December 19, 1972 the California Supreme Court placed Silverton under interim suspension with regard to his right to practice law in the State of California because of the aforestated convictions.

At the time of the interim suspension in the current matter, Silverton had been on interim suspension since March 8, 1972 with regard to a previous conviction for perjury; which conviction was subsequently reversed by the appellate court after Silverton had completed his term of incarceration - 13 months in the State Penitentiary. After the reversal, Silverton was retried and acquitted. The suspension on that matter which went into effect on an interim basis on March 8, 1972, was on July 8, 1973 vacated.

On July 6, 1973 the California Supreme Court referred the matter of Silverton's conviction of criminal conspiracy and solicitation of a crime to the California State Bar for hearing, report and recommendation as to the nature and extent of discipline to be imposed.

The California State Bar acting through a three member Local Administrative Committee adopted

findings and unanimously recommended that Silverton be suspended from practice for a period of five years; such period of suspension to commence retroactively to the period of the interim suspension, December 19, 1972, and that two years of such suspension be stayed on the condition that Silverton refrain from prohibited acts. (Findings of Fact, Conclusions and Recommendations of Local Administrative Committee, attached exhibit D, pages 1-2.) This recommendation was expressly concurred in by the examiner for the California State Bar. (The examiner is the lawyer appointed by the State Bar to investigate, gather and prepare the evidence and present the same to the trial committee: Rule 26, Rules of Procedure of the State Bar of California - January 1974). Attached exhibit "E" concurrence letter filed by the examiner for the State Bar with regard to the referral to the State Bar for hearing report and recommendation as to the extent and nature of discipline to be imposed because of Silverton's conviction. Disciplinary Board of the State Bar after considering the transcript of the hearing before the Local Administrative Committee (Exhibit "F" attached hereto, comprised of approximately 144 pages) recommended disbarment by an 11 to 1 vote. The one vote against disbarment was on the ground that the degree of discipline was excessive. (Exhibit "G" attached hereto is the changes

by the Disciplinary Board in the findings of the Local Administrative Committee, and the recommendations of said Disciplinary Board).

The Disciplinary Board deleted Silverton's assertions by way of mitigation. Though said assertions were uncontradicted and were relevant and competent on the issue of discipline (references are to the transcript of testimony before the Local Administrative Committee; abbreviated herein as "a/t"):

Silverton was the sole owner of a law firm employing 65 persons. He had been in practice since 1958. His reputation in the field was good. He had been commended by the California Legislature and by the County of Los Angeles. He had just prior to January 1972 announced that he was going to run for District Attorney of Los Angeles County. (a/t: page 106, lines 25-28; and page 98, lines 5-9).]

Silverton's under oath uncontradicted testimony at the Local Administrative Committee hearing was supported by the court record of the case in which Silverton was convicted. (This conviction was a result of a submission of the case to a Superior Court Judge to decide based on the transcript of the Preliminary Hearing in that case. The Preliminary Hearing Transcript, hereinafter referred to herein as "p/t", is currently lodged with the California Supreme Court; however, Silverton has a copy of it, composed of 184 pages, which is available to Your

Honorable Court immediately upon notice). The acts shown in the transcript of the preliminary hearing and again in the transcript of the hearing before the Local Administrative Committee which may be reasonable ascribed to Silverton, which were the only possible basis for the conviction, were completely innocent, and show not one iota of conduct which was contrary to justice, honesty and good morals. Any acts ascribed to Silverton that had any but an innocent meaning were ascribed to Silverton on the basis of his mere association with co-defendants Rose and Stavish:

[Mr. Rooker, an investigator for the Los Angeles District Attorney's Office, in an effort to get something on Silverton despite what the actual facts might be (a/t: page 115, line 22 - page 116, line 5; p/t: page 92, fifth sentence from bottom of the page - bottom of page), barged into Silverton's office and said to Silverton words to the effect, "Well, I'm not hurt but I was in an accident, and my car was severly damaged." Silverton said to him, "if you are not hurt I don't want the case. Sometimes, however, people don't know whether they are hurt, and perhaps you should be examined." During this time - not more than five minutes - Silverton had many phone calls, a client in the office, and was signing different things. (a/t: page 95, lines 1-11; p/t: page 44, lines 5-21).

Based on mere association, Silverton has ascribed to him the acts of his "co-conspirators", Betty Rose in informing Rooker that Silverton would aid him in recovery of money from his auto accident without being injured; and Dr. Gerard Stavish who examined Rooker twice though Rooker said that he wasn't injured. Each of these "co-conspirators" testified before the Local Administration Committee, and under oath denied that Silverton had any involvement at all with them or either of them, in connection with their activities with Rooker. (a/t: pages 40-63, for the testimony of Dr. Stavish; pages 63-76, for the testimony of Betty Rose.)

The testimony of Dr. Gerard Stavish and Betty Rose[before the Local Administrative Committee convinced the examiner representing the California State Bar, Thomas M. Comparet, that disbarment was not warrented. Mr. Comparet's statements before the Local Administrative Committee, page 138, lines 9-22 of the transcript bear quotation:

> MR. LLOYD (member of the Local Hearing Committee, speaking to Mr. Comparet, the examiner for the California State Bar):
> "Did you have a specific recommendation woven in there somewhere?
> MR. COMPARET: "At the beginning, yes.
> CHAIRMAN GAIMS (Chairman of the Local Hearing Committee): "Permanent disbarment?

MR. LLOYD (member of the Local Hearing Committee): "You still feel that is the sanction that should be imposed here?

MR. COMPARET: "Well realistically speaking, yes, I think that I would probably tend to come off that a little bit due to the testimony from Miss Rose and Dr. Stavish to the effect that in point of fact they had no contact with Mr. Silverton, and that this was apparently the unauthorized work of Betty Rose, . . .".

The California Supreme Court in disbarring Silverton overlooked the transcript of the hearing before the Local Administrative Hearing of the State Bar which showed conclusively the innocence of Silverton of the acts constituting the basis for the conviction; and disregarded the recommendations of the Local Administrative Hearing Committee who heard the evidence, and the opinion of Mr. Comparet, the Examiner appointed by the State Bar who was appointed by the State Bar to gather, prepare and present the evidence against Silverton to the State Bar (See exhibits "D" and "E"). The California Supreme Court chose to accept the recommendation made by the Disciplinary Board of the State Bar on a split vote "significantly" according to that Court, at page 10 of its opinion (see exhibit "H" attached, opinion of the California Supreme Court on the disbarment) because Silver-

ton failed to show remorse. This failure to show remorse is because Silverton does believe he is innocent and moreover that he did not have a fair trial, and also that his Federal Constitutional Rights were violated by the State of California in affording to Silverton an evidentiary hearing, to look into his contentions of an unfair trial, that was not adequate to afford a full and fair hearing; and said evidentiary hearing itself was wrought with violations of the Petitioners right to due process.

III

SUMMARY OF CRIMINAL PROCEEDINGS LEADING TO DISBARMENT BY THE CALIFORNIA SUPREME COURT:

1. In **People v. Silverton,** No. A 281 235, Los Angeles Superior Court, initiated by Information filed March 8, 1972, Silverton and co-defendants Betty Rose and Gerald E. Stavish were charged with felonies in three counts. In Counts I and III, it was charged that between or on about December 27, 1971 and January 25, 1972: (The below is quoted from the filed charges.

> The defendants, in violation of Penal Code sections 182.1 and 182.4 and Insurance Code section 556, engaged in a criminal conspiracy to defraud one Rooker and State Farm Mutual Insurance Company of property,

to obtain money or property by false pretenses, and to present or cause to be presented and to prepare, with intent to be presented a false or fraudulent claim for payment of a loss under a contract of insurance (Count I, conspiracy).

The defendants, in violation of Penal Code section 653f, solicited Rooker to commit or join in the commission of the crime of grand theft (Count III, solicitation count).

Count II charged that Silverton and the co-defendants, in violation of Insurance Code section 556, prepared or caused to be prepared, certain writings with intent to present or use such writings in support of a fraudulent claim for payment of a loss under a contract of insurance. Count II was dismissed pursuant to a motion under Penal Code section 995. (Minutes of the Los Angeles Superior Court, March 29, 1972).

2. At the preliminary hearing, Silverton, Rose and Stavish were held to answer; but the charges against a co-defendant Johnson, were dismissed. (Clerk's transcript pages 178, lines 1-20, and 183, lines 1-12; this transcript is on file with the California Supreme Court, however, Silverton has a copy which he will immediately make available to Your Honorable Court on notice).

3. In the Superior Court, Silverton appeared in propria persona. Attorney Sharon F. Freis was of record as "advisory counsel" for Silverton. Attorney Steven L. Dobbs appeared of record for co-defendant Rose and Attorney Don H. Terry for co-defendant Stavish. Motions were made under Penal Code section 995 and sections of the California Penal Code sections 1538.5 and 1539. (Superior Court Minutes March 8, 1972.) The Motions under section 995 were argued. (Superior Minutes, March 21, 1972.)

4. (On April 11, 1972, Silverton appealed from the judgment of conviction) by Attorney Robert N. Harris, Jr. Application for bail pending appeal was denied. (Notice of Appeal is part of the Clerk's transcript, it was filed April 11, 1972).

5. On October 31, 1972, Silverton's judgment of conviction was affirmed by the Court of Appeal Second Appellate District in an unpublished opinion by Thompson, J., concurred in by Wood, P.J., and Clark, J. (This opinion is on file with the California Supreme Court, a copy of it is with Silverton, who will make it available to Your Honorable Court on notice). On December 29, 1972 the California Supreme Court denied a hearing.)

6. Silverton thereafter appealed the judgment of conviction to the Supreme Court of the United States. No stay of proceedings was issued. That Court on May 21, 1973, dismissed the appeal on the jurisdictional statement for want of a substantial federal question. ([1973] 412 U.S. 901; reh'g denied [1973] 94 S.Ct. 39).

IV

SUMMARY OF COLLATERAL ATTACK UPON CONVICTION UPON WHICH THE DISBARMENT IS PREDICATED:

A. On September 26, 1973 the Superior Court of the State of California, in and for the County of Sacramento in proceeding number 43317 "In the matter of the Application of Ronald R. Silverton for a Writ of Habeas Corpus" ordered that the Los Angeles Superior Court give to Silverton an eivdentiary hearing on the grounds in Silverton's Application, which were:

1. In arriving at his judgment that Silverton was guilty, Judge William A. Caldecott considered contentions brought to his attention outside of the courtroom and outside of the presence of Silverton and his advisory counsel. The nature of these contentions were unknown to Silverton or his advisory counsel, and were of a nature opposite to Silverton's protestations of innocence of the charges to be considered by Judge Caldecott.

2. Silverton waived his right to jury trial, and waived his right to confront the witnesses against him, and agreed to submit the matter of his guilt or innocence to the trier of fact, Judge William A. Caldecott, on the facts as set forth in the transcript of the preliminary hearing because Silverton believed that he had received from his advisory counsel, Sharon Freis, an accurate account of the remarks attributed to Judge Caldecott by Attorney Sharon Freis. These remarks were (unbeknownst to Silverton) made in Judge Caldecott's chambers, not on the record, in a private interview between only Judge Caldecott and Attorney Sharon Freis, while the latter was acting in her capacity as advisory counsel for Silverton. These remarks took place during, or immediately after the consideration by Judge Caldecott of Silverton's motion to dismiss the information in Case Number A-281235 under California Penal Code §995, as to whether the facts as shown in the Preliminary Transcript were sufficient to hold Silverton to answer the information. Silverton did not consent to said private interview, nor did he have any prior knowledge thereof, though he was in propria persona.

During this interview Judge Caldecott made statements to Mrs. Freis which she reasonably construed as an expression of an opinion on the case which was before him of Silverton: that the

Preliminary Transcript did not show Silverton to be guilty. When Mrs. Freis relayed these statements to Silverton and to Silverton's other co-advisory counsel, Attorney Robert Harris, these statements did reasonably induce Silverton to waive a jury trial and his right to confront witnesses against him, and to submit the matter of his guilt or innocence to Judge Caldecott on the transcript of the Preliminary Hearing. These statements incorrectly prognosed the opinion of Judge Caldecott on Silverton's guilt.

B. An evidentiary hearing was held on the aforeexpressed contentions of Silverton, in the Los Angeles Superior Court on January 9, 10, and 11th of 1974 - Los Angeles County Superior Court Case number 2-A 281235. At that hearing Silverton's diligence in presenting his grounds of collateral attack based on his recent discovery of them was stipulated to by the Attorney for the Respondent therein, the Los Angeles County District Attorney. (page 111, lines 1-10 of the transcript of the evidentiary hearing, copies of which are Lodged with the Clerk of the California Supreme Court and with the United States Federal District Court, for the Central District of California, in the latter court as exhibit "D" to the Petition for Writ of Habeas Corpus entitled "Ronald R. Silverton, Petitioner vs. California Adult Authority, Respondent - Case No. CV 74-1636 MML (T). Silverton does also have a

copy which he will make immediately available to Your Honorable Court on notice).

On January 11, 1974 the Honorable C.A. Bauer, Judge assigned by the Orange County Superior Court at the request of the Los Angeles Superior Court to hear the evidentiary hearing, "Denied said Writ".

C. On March 8, 1974 a Petition for Writ of Habeas Corpus was filed in the Court of Appeal of the State of California, Second Appellate District-2d Crim No. 24943, on the same grounds raised in the Petition for Writ of Habeas Corpus in the Sacramento Superior Court - Case No. 43317, which was transferred to the Los Angeles Superior Court-No. 2-A 281235, and on which the evidentiary hearing was held; and in addition raised the following five grounds:

1 & 2. That the fact finding procedure employed by the State of California in the evidentiary hearing was not adequate to afford a full and fair hearing because:

1. The Los Angeles Superior Court denied Silverton's motion for discovery, timely and properly made for information that would have been helpful to Silverton at the evidentiary hearing; while permitting to the District Attorney, who represented Respondent at the evidentiary hearing, discovery over the proper and timely objection of Silverton.

2. Denial by the Los Angeles Superior Court, the Honorable James Kolts, of Silverton's motion to disqualify said Judge James Kolts under the authority of California Code of Civil Procedure § 170(5) from sitting as the trier of fact at the evidentiary hearing granted by the Sacramento Superior Court. This erroneous denial denied Silverton the same protection of California Code of Civil Procedure § 170(5) permitted all other persons using the California Superior Court, and compelled Silverton to use the single summary challenge permitted under Californai Code of Civil Procedure § 170.6 to disqualify Judge James Kolts from sitting as the trier of fact as the evidentiary hearing.

This use of the single challenge permitted by California Code of Civil Procedure § 170.6 to disqualify Judge James Kolts precluded Silverton the option of its use on the Honorable C.A. Bauer, Judge assigned by the Los Angeles County Presiding Judge to hear the evidentiary hearing with regard to the Petition for Writ of Habeas Corpus.

3 & 4 & 5. The Los Angeles Superior Court holding the evidentiary hearing failed to provide a fair hearing beacuse:

3. The Court denied at the evidentiary hearing (Page 192, line 3) Silverton's request to introduce evidence of the results of polygraph examinations of crucial witness Attorney Steven L. Dobbs, though

the reliability of the polygraph in general, and its reliability in the specific examination of Mr. Dobbs was uncontradictedly demonstrated in the offer of proof. The offer of the evidence of the result of the polygraph exmaination of Steven L. Dobbs, which offer the court denied, included an offer to the court to submit the witness Dobbs to an examination by polygraph by any competent polygraph operator chosen by the court, and that the results of said examination would be entered into evidence; and that the cost of said examination would be borne by Silverton.

4. The Court denied at the evidentiary hearing Silverton's request to introduce into evidence the testimony of Betty Rose and Dr. Gerard Stavish (the two "co-conspirators" in the proceeding being attacked, whose conduct was ascribed to Silverton under the theory of conspiracy; and such conduct so ascribed was the only basis for an allegation that Silverton violated any law). Silverton's offer of proof was made that each of the "co-conspirators" would testify to the effect that each had notified Silverton just prior to his submission of the matter on the transcript, that each would tell the truth on the witness stand if the matter that was submitted went to trial. That the truth to which each would testify was that Silverton had no involvement with either of them with regard to the conduct constituting the

basis of the prosecution. (Transcript of Evidentiary Hearing, page 93, line 12 - page 102, line 26).

5. Flagrant, calculated misconduct on the part of Respondent's counsel, the Los Angeles County District Attorney, which undoubtedly prejudiced the trier of fact at the evidentiary hearing against Silverton.

Over the objection of Silverton, the counsel for Respondent, the Los Angeles County District Attorney, in bad faith asked a most scurrilous series of questions to a character witness for Silverton (a California Superior Court Judge). These questions impugned the ethics, honesty, and integrity of Silverton. The District Attorney later withdrew the questions and apologized to Silverton, admitting that he knew better than to ask questions that he was not prepared to prove up the answers to. However, this apology, which was on the record before the court, contained inferences of the "bad character" of Silverton, and itself was designed to taint the trier of fact. (Transcript of Evidentiary Hearing pages: 201, lines 13-24; 194, line 5 - page 207, line 8; page 201, lines 13-24).

The Petition for Writ of Habeas Corpus on the above grounds was denied on April 3, 1974 by the Court of Appeal of the State of California, Second Appellate District.

D. On April 11, 1974 a Petition for Hearing on the denial by the Court of Appeal of the aforestated Petition for Writ of Habeas Corpus, was filed in the California Supreme Court. It was denied on May 1, 1974.

E. Contemporaneously with the Petitions for Writ of Habeas Corpus, and Petition for Hearing being filed in the California Court of Appeal and the California Supreme Court, respectively; Petitions for Writ of Corem Vobis were filed in the California Court of Appeal -2d Crim 24942, and for Hearing on its denial, in the California Supreme Court. The grounds were in essence that Silverton's free will and judgment were overreached by representations made him by his advisory counsel, Sharon Freis. And that these representations caused Silverton to waive his right to trial by jury, and to confront witnesses, and to submit the matter of his guilt or innocence on the facts as shown by the preliminary transcript. That the representations made to him were ones which his advisory counsel, Sharon Freis, obtained in a private conference with Judge Caldecott, the trier of fact in the case being attacked. That the representations to the effect that Judge Caldecott did not believe that the transcript showed Silverton to be guilty of the offenses charged, beyond a reasonable doubt were either not made by Judge Caldecott, or when made were incorrect.

The Petition for Writ of Error Corem Vobis filed in the California Court of Appeal was denied contemporaneously with the denial of Silverton's Petition for Writ of Habeas Corpus therein filed. And Silverton's subsequent Petition to the California Supreme Court for a Hearing on said denial, was denied contemporaneously with the denial by the California Supreme Court of the Petition by Silverton for a Hearing by the California Supreme Court on the denial by the California Court of Appeal of Silverton's Petition for Writ of Habeas Corpus.

F. On June 12, 1974, Silverton filed a Petition for Writ of Habeas Corpus in the United States District Court, Central District of California - Case Number CV74-1636-MML(T). A return was ordered and filed. Silverton filed a traverse. On August 27, 1974, Respondent-Appellee, The State of California, without the court's permission filed a supplemental brief. Silverton, pursuant to permission of the court filed a supplemental traverse on October 24, 1974.

The Petition of Silverton filed in the United States District Court contained each and all of the contentions set forth in the Petition for Writ of Habeas Corpus in the California Court of Appeal (page 10, line 4 - page 11, line 11; & page 12, line 9 - page 14, line 19; of this Response). And in addition alleged that as a result of the many errors alleged: that

Silverton was denied Due Process of Law in the evidentiary hearing granted on his Petition for Writ of Habeas Corpus; and that the factual determination of the Court at the evidentiary hearing was not supported by the record.

G. On March 31, 1975 the United States District Court for the Central District of California, the Honorable Malcolm M. Lucas Judge Presiding, filed a judgment that the Petition for Writ of Habeas Corpus is denied, and adopted as its reasons the findings and conclusions of the United States Magistrate Tassopulos filed on the same date. (Said judgment and the findings and conclusions of United States Magistrate Tassopulos is attached hereto as exhibit "I").

H. On April 10, 1975 Silverton filed in the United States District Court for the Central District of California, a Petition for Reconsideration of the denial of the Petition for Writ of Habeas Corpus. This Petition primarily dealt with the patent misconception by Magistrate Tassopulos of the final contention made by Silverton in his Petition. (See attached Petition for Reconsideration - exhibit "J" attached). The Court denied said motion on June 24, 1975.

I On April 16th 1975 Silverton filed with the United States District Court for the Central District of California:

1) Notice of Appeal from the judgment of March 31, 1975 of the Federal District Court, denying the Petition for Writ of Habeas Corpus.

2) Application for Certificate of Probable Cause to the Honorable Malcolm M. Lucas, Judge of the United States District Court for the Central District of California, viz: for a statement that there exists probable cause to appeal the judgment of March 31, 1975 denying the Petition for Writ of Habeas Corpus.

J. On April 17, 1975 Silverton filed in the United States District Court for the Central District of California a document entitled "Designation of Record on Appeal"

K. On August 21, 1975 the United States District Court, the Honorable Malcolm M. Lucas, Judge Presiding, filed an Order Denying Application for Certificate of Probable Cause.

L. On September 17, 1975 a Request for Issuance of a Certificate of Probable Cause was made to the Judges of the United States Court of Appeals for the Ninth Circuit pursuant to Federal Rule of Appellate Procedure Number 22(b), so that an appeal could be taken from the order of the United States District Court for the Central District of California denying the Petition for Writ of Habeas Corpus, District Court case number CV 74-1636 MML(T) (see "G" above-page 16, lines 12-19). On

November 11, 1975 the United States Court of Appeals for the Ninth Circuit denied the Request for Issuance of a Certificate of Probable Cause as "legally frivolous for the same reasons expressed by the District Court" - CA No. 758390.

M. Silverton does intend within the 90 day period from November 11, 1975 permitted by 28 U.S.C. §2101(c) to Petition for Certiorari Your Honorable Court to review the order of the United States District Court and the United States Court of Appeals for the Ninth Circuit, each refusing to grant to Silverton a Certificate of Probable Cause; which refusal in each case is based on the decision of the United States District court denying the Petition for Writ of Habeas Corpus for the reasons given in the report and recommendations of the United States Magistrate.

V

DISBARMENT IS UNWARRANTED

In the case at bar it is based on disbarment by the California Supreme Court, which is based on the recommendation of the Disciplinary Board of the State Bar, which in turn is based on a conviction involving moral turpitude.

There was no moral turpitude involved in the acts on which Silverton's conviction was based. The transcript of the proceedings at the preliminary

hearing on the offense of which Silverton was convicted, along with a statement of innocence by Silverton, constituted the entire record before the trial court that convicted Silverton. The acts in said transcript that have any but an innocent meaning were ascribed to Silverton on the basis of mere association. The conduct words, and associations of Silverton, shown in that transcript were completely innocent, and show not one iota of conduct which is contrary to justice, honesty and good morals.

In addition the fairness of the state proceedings resulting in the disbarment are certanly in question.

Although admission to practice before the Supreme Court of the United States is derivative from membership in a state bar, disbarment by a State does not automatically result in disbarment by the United States Supreme Court. **Theard v. U.S.** 354 US 278, 282, 77 S.Ct. 1274 1 L.Ed. 2d 1342 (1957); **In re Ruffalo,** 390 US 544, 547, 20 L.Ed. 2d 117, 88 Sup. Ct. 1222 (1968). In the latter case the court stated at page 550: "Therefore, one of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether 'the state procedure from want of notice or opportunity to be heard was wanting in due process.'".

Where factual issues are raised, or where the fairness of the state proceedings resulting in disbarment there have been challenged, the Court may appoint a committee to make an inquiry into the matter and submit a report and recommendation to the Court. **In re Capshaw,** 65 S.Ct. 673 (1945), 67 S.Ct. 1345 (1947). The Court may then make an appropriate order which may be a reprimand rather than an order of disbarment, or one dismissing the order to show cause. See **In re Davis** 289 U.S. 704, 77 L.Ed. 1461, 53 S.Ct. 658 (1933).

Respectfully Submitted,

Ronald R. Silverton
In Propria Persona

THE DEPARTMENT OF THE TREASURY
OFFICE OF THE DIRECTOR OF PRACTICE
WASHINGTON, D.C.

DIRECTOR OF PRACTICE,

Complaint,

vs.

RONALD R. SILVERTON,

Respondent.

No. 76-5

ANSWER TO AMENDED COMPLAINT

COMES NOW, the respondent, RONALD R. SILVERTON, and denies, avers, and alleges as follows:

I

Respondent was disbarred from practice by the Court of the United States because he was disbarred from practice as an attorney in the State of California by the Supreme Court of California by the Supreme Court of California and also disbarred from practice as a Certified Public Accountant by the California State Board of Accountancy by virtue of his conviction on one count of violating §182.4 of the California Penal Code and of violating §653(f) of the California Penal Code.

II

That the facts underlying the two afore-enumerated charges do not show criminal offense involving dishonesty or breach of trust; that the arguments made on pages 3 through 19 of Exhibit attached to the Answer in this case is hereby incorporated by reference as though set forth at length.

RONALD R. SILVERTON
Respondent

Dated this 26th day of January, 1977, at Los Angeles, California.

APPENDIX
"I"

OFFICE OF ADMINISTRATIVE LAW JUDGE
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
DEPARTMENT OF THE TREASURY

DIRECTOR OF PRACTICE,

Complainant,

vs.

RONALD R. SILVERTON,

Respondent.

Complaint No. 76-5

INITIAL DECISION

This is an action on an April 8, 1976, complaint of the Director of Practice of the United States Treasury Department against Mr. Ronald R. Silverton, Los Angeles County California, who has been disbarred from the practice of law by the Supreme Courts of the State of California and the United States. In addition, the California Board of Accountancy re-

voked Mr. Silverton's Certificate as a certified public accountant. On April 5, 1972, Mr. Silverton was convicted of the felony of conspiracy to defraud and of solicitation to commit grand theft for which he was sentenced to imprisonment in State prison. The felony conviction was affirmed by the Courts of California. In addition, Mr. Silverton was unsuccessful in a habeas corpus action through the Federal Courts. The Director of Practice relies upon 31 C.F.R. Section 10.50 which provides, in pertinent part, that the Secretary of Treasury, after due notice and opportunity for hearing, may suspend or disbar from practice before the Internal Revenue Service any attorney, certified public accountant, or enrolled agent shown to be incompetent, disreputable or who refuses to comply with the rules and regulations in Part 10, Title 31 of the Code of Federal Regulations or who shall with intent to defraud, in any manner willfully and knowingly decisive mislead or threaten any claimant or prospective claimant, by word, circular, letter, or advertisment.

Disreputable conduct for which an attorney, certified public accountant, or enrolled agent may be disbarred or suspended from practice before the Internal Revenue Service includes, but is not limited to (a) conviction of any criminal offense under the revenue laws of the United States or of any offense

involving dishonesty or breach of trust or (g) disbarment or suspension from practice as an attorney, certified public accountant, or public accountant by any duly constituted authority of any State, possession, territory, commonwealth, District of Columbia, or any Federal Court of record.

The Government is represented by Mr. William J. Murphy, Attorney at Law, Office of the Chief Counsel, Internal Revenue Service, Washington, D.C.

The Respondent, Ronald R. Silverton, represents himself, pro se.

THE ANSWER

Complainant filed a complaint and an amended complaint and the Respondent filed an answer and an amended answer. The amended answer seems to summarize the Respondent's position accurately and completely. It is alleged therein and admitted that the Respondent was disbarred from practice by the Supreme Court of the United States because he was disbarred from practice by the Supreme Court of California. He was disbarred from practice in the State of California and also his certificate to practice as a CPA was revoked by the State of California because of his conviction of having violated Sections 182.4 and 653(j) of the California Code which are felonies. The Respondent then argues that the

underlying facts which form the basis of the two charges do not show a criminal offense involving dishonesty or breach of trust. He then incorporates by reference 16 pages of narrative comments which were attached to his original answer. These comments concern the events which brought Mr. Silverton through two arrests, imprisonment in the California State prison system for nearly a year, the loss of net worth which was approximately one million dollars at the outset of this series of events, disbarment from the practice of law and the revocation of his accountancy permit all of which led to the instant problem.

FINDINGS OF FACT

1. Ronald R. Silverton was born in Los Angeles, California, in 1931, and attended Los Angeles' public schools graduating from the UCLA School of Law in 1958. He was admitted to the California bar as an Attorney at Law shortly thereafter. (RX-C, GX-7).

2. On January 16, 1968, the California State Board of Accountancy issued Ronald R. Silverton a certificate as a certified public accountant. (GX-3).

3. On April 5, 1972, Ronald R. Silverton waived trial by jury and stipulated that a criminal case styled **People of the State of California v. Ronald R. Silverton,** in which Silverton was charged with having violated Sections 182.4 and 653(f) of the

California Code (felonies) could be decided on the testimony contained in the transcript of the proceedings at a preliminary hearing. The court, based upon this transcript, found Mr. Silverton guilty as charged. The offense involved dishonesty. (GX-5, and entire record).

4. On October 18, 1974, the California State Board of Accountancy revoked Mr. Silverton's certificate as a certified public accountant. The revocation was without prejudice to Mr. Silverton petitioning the Board of Accountancy for reinstatement on or after 1 year of the effective date of the order. (GX-3).

5. On June 3, 1975, Mr. Silverton was disbarred from the practice of law by the Supreme Court of the State of California (GX-4).

6. On January 19, 1976, Mr. Silverton was disbarred from the practice of law before the Supreme Court of the United States as the resu't of the disbarment by the Supreme Court of the State of California. (Entire record).

7. The disbarment from the practice of law by the State of California and the revocation of the certificate of accountancy resulted from the felony conviction heretofore mentioned. (Entire record).

CONCLUSIONS OF LAW

The Respondent has had due notice and opportunity for hearing.

The Government has shown the Respondent to be disreputable and to have committed disreputable conduct by having been convicted of a criminal offense involving dishonesty and by the Respondent's disbarment by the Supreme Courts of the United States and California from practice as an attorney and by the revocation of the Respondent's certified public accountant's privileges all by duly constituted authorities within the meaning of 31 C.F.R. 10.51 (g). The Secretary of Treasury is authorized to suspend or disbar the Respondent from practice before the Internal Revenue Service under authority of 31 C.F.R. Sections 10.50 and 10.52 and Section 1026 of Title 31 of the United States Code.

RULINGS ON GOVERNMENT'S PROPOSED FINDINGS OF FACT

The Government presented 10 proposed findings of fact. Each of the Government's proposed findings of fact is approved as accurate. The only point which should be discussed is the theory set out in the Government's first proposed finding of fact concerning the Respondent's elgibility to practice before the Internal Revenue Service. I think the parties would agree that at the present time, the Respondent is not eligible to practice before the

Internal Revenue Service because he is not an attorney at law, he is not a certified public accountant and he is not a person enrolled to practice before the Internal Revenue Service. Prior to his disbarment by the Supreme Courts of California and the United States and prior to the revocation of his right to practice as a CPA in California he was eligible to practice before the Internal Revenue Service. The short suspension imposed herein will evidentally be served before the Respondent could possible be reinstated as an attorney at law by the Supreme Court of California or as a certified public accountant in California. The Respondent will not be eligible to practice before the Internal Revenue Service until the period of suspension herein has been served and until he is either reinstated as a CPA or as an attorney or until the Respondent should become enrolled pursuant to the provisions of Part 10 of Title 31 of the Code of Federal Regulations as set out in Treasury Department Circular No. 230.

RULINGS ON GOVERNMENT'S CONCLUSION

The attorney for the Government concluded that the Respondent's evidence in mitigation falls short of constituting matters which truly warrant mitigation of the sanction. Going further, the attorney for the Government recommended disbarment. I can not agree with this.

The unnecessary humiliation inflicted upon the Respondent by the investigators of the District Attorney by handcuffing him at the time of his initial arrest and by forcibly bringing him to jail, and the additinal humiliation of not allowing bond after the second arrest and the tactic of proceeding by information rather that grand jury and the sentence for the nonviolent crimes of which the Respondent was charged to a lenthy term of imprisonment seem unrealistic. I am of the opinion that it would have been sufficient, even if Mr. Silverton was totally guilty of the two offenses charged against him in 1971 and 1972, for him to have been disbarred from the practice of law by the Supreme Court of California. The most important elements of each of these offenses involved serious breaches of the code of ethics governing the practice of law. People found guilty of serious breaches of the code of ethics governing attorneys are disbarred from the practice of law, they are not sent to prison. If it had not been for Mr. Silverton's superior physical conditioning and his hobby involving the sport of karate and his entry into karate championships he probably would not have survived his prison term. When he entered prison he was apparently tabbed or considered by the other prisoners as a member of the crime commission and a natural enemy. He was forced to literally fight his way out of certain problems in prison.

Mr. Silverton made a very good appearance in court during the hearing in this case. He is apparently in good physical and mental condition. Some men would have been physically and mentally destroyed by the sanctions already endured.

After carefully studying the entire record in this case and reflecting upon the two criminal cases filed by the District Attorney, I acquired a feeling of sympathy for Mr. Silverton. We can eliminate the first charge, because a second trial resulted in Mr. Silverton's acquittal. As to the second charge I think that any attorney who reviews the record would agree that Mr. Silverton and his attorneys made a judgment error when they allowed the case to be decided without a jury on the preliminary transcript. I am convinced that he could have won this case if he had tried it before a jury. If Mr. Silverton had elected to try the case before a jury I am convinced beyond any doubt whatsoever that he would now be a practicing attorney and a CPA in California and this instant action would never have commenced. I therefore conclude that it all comes down to the apex issue of Mr. Silverton's decision to allow the case to be tried on the preliminary transcript. Mr. Silverton is aware of this and I imagine he regrets the decision he made at that time, but we must remember that the decision was made at a time when he was in prison as a result of two cases

and he was serving concurrent sentences. Also, he was of the opinion that he would be acquitted. In all probability if I had been in Mr. Silverton's shoes at the time I would have made the same decision.

I find sufficient doubt running through this entire record, that if I were the Governor of the State of California I would have a detailed investigation made of the case before deciding whether or not to grant Mr. Silverton a pardon. (I assume that application will be made for a pardon). It appears to me that Mr. Silverton has paid too dearly for the mistakes he may have already made.

RULINGS ON RESPONDENT'S PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW

The Respondent did not present a list of proposed finding of fact or a list of conclusions of law. However, his proposed findings of fact and conclusions of law are interwoven throughout his briefs and the exhibits he presented in evidence at the hearing. My rulings thereon are also interwoven throughout this initial decision. I have ruled that the Government has proven its case by a preponderance of substantial evidence and that the only proof necessary was of a conviction of a criminal offense involving dishonesty and disbarment from practice as an attorney and revocation of certified public accountant rights by the duly constituted

authorities of the State of California and by the United States Supreme Court. I rule that I cannot go behind the criminal conviction and make a decision as to its validity. The criminal case was ruled upon by the Courts of the State of California and the Federal Courts and it is the function of these courts to make the review which they did.

I rule in Mr. Silverton's favor on the question of severity of the sanction, for reasons already stated and those which follow.

SUPPLEMENTAL FINDINGS OF FACT BEARING UPONG THE SEVERITY OF THE SANCTION

1. Late in 1971, Ronald R. Silverton, Attorney at Law and Certified Public Accountant, head of a law firm bearing his name who had practiced law in the State of California of 13 years, a married man with children, with a net worth of approximately a million dollars, announced his intention to enter the coming political race for the job of the District Attorney of Los Angeles County in California. (Tr. (transcript of March 3, 1977, hearing) page 19 and 20; Motion and Declaration to disqualify Judge James A. Kolts in case No. A-281-235 in Superior Court of the State of California in and for the County of Los Angeles; and entire record).

2. Two weeks after the aforementioned announcement, Mr. Silverton was arrested by investigators of the incumbent of the same District Attorney's office

who came into Mr. Silverton's office, handcuffed him, and brought him to jail. (March 3, 1977, Tr. 19).

3. The foregoing arrest was on an information filed by the incumbent District Attorney's office charging subornation of perjury based upon the alleged backdating of a personal injury complaint by someone in Mr. Silverton's law firm. (Tr. 19).

4. Mr. Silverton was released on bail after the arrest on the information charging subornation of perjury. (Tr. 19).

5. While awaiting trial on the above offense Mr. Silverton was again arrested on an information filed by the same District Attorney's office charging him with having violated Sections 182.4 and 653(f) of the California Code which are felonies. This charge consisted of the allegation that Mr. Silverton and certain other people, including two of his employees and a Chiropractor, had conspired to defraud an insurance company in an auto accident case. (Entire record).

6. Following the second arrest, Judge James A. Kolts of the Los Angeles Superior Court refused to release Mr. Ronald R. Silverton on bail and Mr. Silverton went to prison. At this time Mr. Silverton was a practicing attorney and had been for more than 13 years. He was or had recently been a Commissioner on the Los Angeles County Crime and Delinquency Commission, and the recipient,

within the past year, of a commendation from the Los Angeles County Board of Supervisors as "one of California's most distinguished attorneys for his outstanding achievements in the field of law and for his interest and involvement in the affairs of the community," and "a commendation from the California Legislation for his outstanding record of public service." (Page 2, Mr. Silverton's Declaration under penalty of perjury in his motion to disqualify Judge Kolts filed on October 1, 1973, in case A-281-235 Superior Court of the State of California; and the entire record).

7. Mr. Silverton was subsequently convicted of the first offense. He appealed. He then, under authority of Article 1 of Section 7 of the California Constitution, waived trial by jury as to the second offense. By the consent of both parties, the second case was decided by a Judge Caldecott, based upon the transcript of a preliminary hearing. Judge Caldecott found Mr. Silverton guilty and sentenced him to a prison term which was concurrent with the prison term imposed by the court in the first case. Shortly thereafter the first case was retried and Mr. Silverton was acquitted by a jury. (Entire record).

8. Mr. Silverton spent over 10 months in State prison under very difficult conditions. (Entire record).

9. Because of Mr. Silverton's imprisonment in the California State prison and subsequent disbarment

by the Supreme Courts of California and the United States and the revocation of his right to practice as a certified public accountant, his net worth decreased by nearly a million dollars.

CONCLUSION RELATED TO THE SEVERITY OF THE SANCTION

This was apparently an instance of attorneys and judges disciplining one of their own. It is an example of how severe judges and attorneys can be when they have evidence before them suggesting that one of their peers has established a gigantic ambulance chasing law firm.

It is not necessary that the sanction imposed herein be severe. Certainly, if Mr. Silverton is ever exonerated, the Internal Revenue Service would want to restore his right to practice before it. At the present time, since Mr. Silverton is not an attorney, and he is not a certified public accountant, and he is not an enrolled agent, he does not have the right to practice before the Internal Revenue Service. If he should be again given the right to practice law or public accountancy as a CPA, he would, in view of this decision, again be entitled to practice before the Internal Revenue Service.

I can not comment on or evaluate the decision made by Judge Caldecott. The appellate courts having the jurisdiction to do so have already af-

firmed his action. The event which made Mr. Silverton look bad was his lack of appropriate reaction when he met the District Attorney's investigator in his office the day after Mr. Rooker had been signed up as a Silverton client by the ambulance chaser, Ms. Betty Rose. At that point, by encouraging Mr. Rooker to go along with the Silverton law firm procedure and have a medical examination after the obvious ambulance chasing method of contact, and in view of the stated absence of injury, and in view of the fact that Dr. Stavish, to whom the new client was sent for examination, had recently examined between 80 and 140 of Silverton's clients by referral, Ronald R. Silverton appeared to be the leader of the conspiracy. If he had not been involved in the conspiracy at that time he would have been discharged Ms. Rose as an employee of the Silverton law firm and he then would have ended his association with the "client."

In general, a person is guilty of violating the Federal and State conspiracy laws if he and at least one other person conspire to violate the law and they then commit one overt act in the futherance of the conspiracy. Under this type of a criminal charge, a convicted person might feel that he was innocent because it is not necessary in a conspiracy case for the crime to have actually been committed. The overt acts in the instant case were the signing up of

the District Attorney's agent (Rooker) as a client, the interviewing of rooker, the referral of Rooker to Dr. Stavish, and Dr. Stavish's examinations and written records which began to show injury when there was none. I conclude that the Silverton case is most unusual, but after a careful review of the record it is understandable.

DISCUSSION

The criminal conviction of the Respondent which was affirmed by the Supreme Court of the State of California is not subject to collateral attack. **In Re Tinkoff,** 101 F. 2d 341 (7th Cir. 1939); and **In Re Braverman,** 148 F. Supp. 56 (D. MD. 1957); **Laughlin v. United States,** 474 F. 2d 444 (D.C. Cir. 1972), Reh. Den. (1973), cert. denied 93 Sup. Ct. 2784 (1973). **In Re Tinkoff,** makes reference to State Supreme Court disbarment proceedings and what affect they should be given. It was held that the fact of disbarment can not be attacked, but the reasons for disbarment or the reasons for the severity of the sentence have not been thereby established to such a degree that they are immune from all attack. In our case the bare facts showing disbarment by the State and the Federal Supreme Courts and revocation of CPA rights by the appropriate authority of the State of California are all that is necessary to establish the Government's case.

The reading and digesting of all of the exhibits in this case require many hours of careful study. I relied only upon the materials presented by the parties and the case law cited therein. Because of the valid collateral estoppel theory and its obvious application to this case, I made no exhaustive study of California criminal procedure or the California criminal code. From my experience with Federal conspiracy cases, I recognize what I believe to be a valid conspiracy case under which the Respondent and associates Rose, Johnson, and Stavish conspired to defraud either an insurance company and an individual involved in an auto accident or the conspiracy may have been directed toward defrauding both the insurance company and the individual.

The Respondent may not even recognize his wrong in this case. It is possible that he thinks that what he did was completely innocent, because he does not deny it, yet he insists he is innocent.

The direct contribution of the Respondent to the conspiracy was made at the time the District Attorney's investigator talked to the Respondent on January 6, 1972. Prior to this, Mr. Rooker had been contacted by an employee of the Respondent named Ms. Betty Rose. Ms. Rose appeared in the transcripts provided by the Respondent as an "ambulance chaser" type of employee of the Respondent's law firm. A few days after Rooker had an automobile accident, Mrs. Rose contacted him in

behalf of the Respondent and urged Mr. Rooker to commit fraud by making believe that he was injured in the auto accident. Ms. Rose had Mr. Rooker sign an authorization making the Respondent Rooker's attorney. The next day Rooker went to the Respondent's law firm and he talked to Mr. Johnson the second conspirator, who set up an appointment for Mr. Rooker with the third conspirator, a doctor Stavish, who is a Chiropractor in Los Angeles.

Mr. Rooker saw the Respondent in his office before he left the Respondent's law corporation. Rooker told the Respondent that he was not hurt and he told the Respondent all of the things that Johnson and Rose told him which amounted to suggestion that the facts surrounding a whiplash condition could be falsified. If the Respondent, at this point, had not been knowingly a participant in the conspiracy, he would have insisted that Rooker go to another attorney in view of the obvious ambulance chasing which had occurred and in view of the very slight possibility that Rooker needed any attorney at all. The Respondent did not do this. He encouraged Rooker to see his law firm's doctor.

Dr. Stavish was visited by Rooker. The doctor is the Chiropractor mentioned earlier herein. He asked Rooker several questions such as "do you have any pains in your neck." These questions were all answered in the negative. In a subsequent inter-

view, Dr. Stavish began changing certain answers even though the answers which came from Rooker were not changed. It was obvious that the doctor was forming a basis for a medical report which could be used either in a law suit or in settling a tort liability case.

If the Respondent had been a reputable attorney and had not been part of the conspiracy he would not have acted as he did.

I based the severity of the sanction imposed herein upon the entire record and I have read each and every word thereof.

DECISION AND ORDER

I hold that the Government has proven its case by substantial evidence. I further find that the State of California and the Supreme Court of the United States were amply supported in the disbarments and the revocation which they imposed.

In view of the foregoing and the entire record, it is ordered that Mr. Silverton be suspended from practice before the Internal Revenue Service for a period of three months.

Kenneth L. Travis
Administrative Law Judge

May 27, 1977
Washington, DC

APPENDIX
"J"

DIRECTOR OF PRACTICE,

Complainant,

v.

RONALD R. SILVERTON,

Respondent.

Complaint No. 76-5

DECISION ON APPEAL

This is an appeal by Complainant, the Director of Practice, filed pursuant to Section 10.71. of Treasury Department Circular No. 230, amended July 1972, 31 CFR §10.71, challenging an Administrative Law Judge's decision dated May 27, 1977, to suspend Respondent from practice before the Internal Revenue Service for a period of three months, rather than to disbar him. This appeal comes before me for decision under Treasury Department Order No. 175-1 (September 13, 1963), and Treasury Depart-

ment Order No. 190 (Revision 14) (July 1, 1977), which authorize the General Counsel to perform the functions of the Secretary of the Treasury relating to the Office of the Director of Practice.

Respondent was convicted of two felonies: one coundt of violating Section 182.4, California Penal Code (conspiract to obtain money by false pretenses) and one count of violating Section 653(f), California Penal Code (soliciting another to commit or join in the commission of grand theft) on or about April 5,1972 by the Superior Court of California, Los Angeles County. These convictions were affirmed on appeal through the California State court system, certiorari was denied by the U.S. Supreme Court, and a petition for a writ of habeas corpus in Federal court was also denied.

The complaint alleges that Respondent was first enrolled to practice before the Internal Revenue Service (IRS) as an attorney and a Certified Public Accountant on or about October 27, 1958; that Respondent at all times material hereto was eligible to practice before the IRS by virtue of 5 U.S.C. 500, and that he did so practice. It further alleges that Respondent is subject to disbarment or suspension from practice before the IRS by reason of his (1) disbarment from practice as an attorney of the Supreme Court of the United States; (2) disbarment from practice as an attorney by the Supreme Court

of California; (3) disbarment from practice as a Certified Public Accountant by the California State Board of Accounting, all in violation of 31 CFR 10.51(g); and (4) by reason of his conviction of a criminal offense involving dishonesty or breach of trust in violation of 31 CFR 10.51(a).

In his answer Respondent admitted that he had been disbarred from the practice of law by the Supreme Court of the United States and the Supreme Court of California and from practice as a Certified Public Accountant by the California State Board of Accounting; and that he had been convicted of the offenses alleged.

A hearing was held March 3, 1977, before an Administrative Law Judge. At the hearing Complainant introduced certified copies of the convictions, disbarments, and supporting opinions. Respondent presented extensive documentary evidence compiled during his prosecution and disbarment, and testified, essentially attempting again to collaterally attack his convictions. A decision was renered on May 27, 1977 by the Administrative Law Judge. He found that:

> The Government has shown the Respondent to be disreputable and to have committed disreputable conduct by having been convicted of a criminal offense involving dishonesty and by the Respondent's disbarment by

> the Supreme Courts of the United States and California from practice as an attorney and by the revocation of the Respondent's certified public accountant's privileges all by duly constituted authorities within the meaning of 31 C.F.R. 10.51(b). The Secretary of Treasury is authorized to suspend or disbar the Respondent from practice before the Internal Revenue Service under authority of 31 C.F.R. Sections 10.50 and 10.52 and Section 1026 of Title 31 of the United States Code. (Initial Decision, p.5)

After implying that, despite the affirmance of respondent's convictin on appeal, there were procedural irregularities in that prosecution, the Administrative Law Judge decided that "[i]t is not necessary that the sanction imposed herein be severe." Initial Decision at 12. He further speculated:

> Certainly, if Mr. Silverton is ever exonerated, the Internal Revenue Service would want to restore his right to practice before it. At the present time, since Mr. Silverton is not an attorney, and he is not a certified public accountant, and he is not an enrolled agent, he does not have the right to practice before the Internal Revenue Service. If he should be again given the right to practice law or public

accountancy as a CPA, he would, in view of this decision, again be entitled to practice before the Internal Revenue Service. **Id.**

Finally, stating that he was basing his decision on the entire record, the Administrative Law Judge ordered that Respondent be suspended from practice before the Internal Revenue Service for a period of three months.

Complainant filed a timely appeal, on June 27, 1977, a Monday, from that portion of the Initial Decision that suspended Respondent for only three months. In his appeal, the Director contended that the suspension was "totally inadequate considering the serious nature of the offenses committed, and was based on the consideration of improper matters in mitigation." Appeal, at paragraph 7. He urged that the sanction be changed to disbarment.

Respondent did not file an appeal from the Administrative Law Judge's finding that he was guilty of "disreputable conduct" within the meaning of 31 CFR §10.51, on account of his having been convicted "of any offense involving dishonesty, or breach of trust." It is thus settled, for purposes of this appeal, that Respondent is subject to disbarment or suspension. **Id.** Respondent's defense to the appeal is that the Administrative Law Judge's decision as to the appropriate penalty was proper and based on appropriate factors.

The Administrative Law Judge erred in his determination of the appropriate sanction. By simply assuming that the Internal Revenue Service would want to restore Respondent's right to practice before it if he were ever exonerated, the Administrative Law Judge effectively abandoned his responsibility independently to enforce the rules governing practice before the Internal Revenue Service. Having determined that Respondent stood guilty of disreputable conduct, and had been convicted of criminal offenses, the ALJ should have looked to the nature of the offense, and any evidence that Respondent offered in mitigation, as they affected the Federal interests involved in practice before the Internal Revenue Service.

The question of an appropriate remedy for a violation of Section 10.51 turns on different factors from those involved in the imposition of a sentence upon a criminal conviction. Chief among those purposes is the protection of the public from unscrupulous practitioners. Also of substantial importance as General Counsel Albrecht said in a prior appeal involving the severity of the penalty imposed, **Director of Practice v. Bruskin,** Complaint No. 75-6, decided May 11, 1976, at page 3, is the prevention of conduct that is either detrimental to the American self-assessment system of taxation or subversive of good government in general.

Respondent stood convicted under Convicted law of two felonies, conspiracy to obtain money by false pretenses and Solicitation to commit grand theft. The facts, as recited by the Administrative Law Judge, indicated that Respondent was an attorney who had engaged, with two chiropractors, in a large ambulance-chasing scheme designed to defraud insurance companies by procuring false evidence of injuries. These are precisely the kinds of misconduct at which the rules of practice are directed. Respondent was subsequently incarcerated for ten months and he was permanently disbarred by the State of California from practice both as an attorney and as a Certified Public Accountant, after contested hearings.

In the face of this evidence, the burden was on Respondent to produce mitigating evidence. Indeed, absent powerful mitigating factors, these convictions mandated disbarment. Respondent completely failed to present such facts, and instead persisted in complaining of his treatment at the hands of the California authorities. Although it appears that he substantially impressed the Administrative Law Judge with his recitation of the rigors of prision life, and the amount of money his prosecution and conviction cost him, those were not substantially relevant to the propriety of his continued admission to practice before the Internal Revenue Service.

Moreover, a full review of the record,*/ including the briefs on appeal, has failed to disclose facts justifying any mitigation. During these proceedings the Respondent has simply refused to acknowledge his guilt, or even to show why he may be expected to conduct himself differently in the future.

The issue of the appropriate sanction in this case is not insignificant, for there may yet be a time when Respondent is readmitted to the practice of law or accountancy under California laws that permit a petition for readmission after five years. Similarly, however, the Internal Revenue Service rules of practice permit such a petition, after five years. 31 CFR § 10.75. At that time the Respondent may present evidence that he "is not likely to conduct himself contrary to the regulations, . . ., and that granting such reinstatement would not be contrary to the public interest." **Id.**

*/ The Complainant has also appealed the Administrative Law Judge's consideration of exhibits submitted by Respondent with his "Opening Brief" some seven weeks after conclusion of the hearing. While it is not arguable that those exhibits were argument rather than fact, they are not germane to the issue of the sanction in any event. They thus deserve no weight.

It is ordered that Respondent be disbarred from practice before the Internal Revenue Service effective this date.

Date: Nov. 1, 1977.

Robert H. Mundheim
General Counsel

APPENDIX
"K"

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE A. ANDREW HAUK,
JUDGE PRESIDING

RONALD R. SILVERTON,

Plaintiff,

vs.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, THE STATE BAR OF CALIFORNIA, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Defendants.

No. 77-4656-AAH

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, APRIL 17, 1978

IRA LEE NEWLANDER, CSR
OFFICIAL REPORTER
438 U.S. COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES, CA 90012
TEL: (213) 624-0030

APPEARANCES:

ON BEHALF OF PLAINTIFF:

RONALD R. SILVERTON, ESQ. IN PRO SE
3600 WILSHIRE BOULEVARD, SUITE 220
LOS ANGELES, CALIFORNIA 90010

ON BEHALF OF DEFENDANT STATE BOARD OF ACCOUNTANCY:

ALAN M. MANGELS, ESQ.
3580 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90010

THE STATE BAR OF CALIFORNIA:

ROBERT M. SWEET, ESQ.
1230 WEST THIRD STREET
LOS ANGELES, CALIFORNIA 90017

Los Angeles, California; Monday, April 17, 1976; 10:00 A.M.

—000—

THE CLERK: CV 77-4656, Ronald R. Silverton vs. The Department of Treasury and Others.

THE COURT: Anything to be added to the motions and the papers and the points and authorities and opposition thereto already filed?

MR SWEET: Not for the State Bar, your Honor, Robert Sweet for the State Bar.

MR. SILVERTON: Robert Silverton in Pro Per your Honor. I filed responses to both the State Board of Accountancy and the State Bar. Unless the court has any questions, I'm satisfied.

THE COURT: All right.

All motions are granted. Everybody is dismissed. It's Res Judicata.

MR. SWEET: Thank you your Honor.

THE COURT: I'll tell you why.

MR. MANGELS: Thank you, your Honor.

THE COURT: Just a moment. In the Federal Habeas Corpus action by Mr. Silverton, the appeal was dismissed in the Ninth Circuit and cert. denied in the United States Supreme Court. 425 U.S. 916. And then we have the decision of the California Supreme Court in Silverton v. State Bar, 14 Cal. 3rd 517. Res Judicata. And of course any review here in this court is barred by the decision of Judge Lucas

which was, as I noted, upheld by the Ninth Circuit and certiorari denied in the Supreme Court. So ordered. Counsel for the moving parties prepare the order in accordance with Local Rule 7:

MR SWEET: Yes, your Honor.

MR. MANGELS: Yes, your Honor.

THE COURT: All the moving parties. The Board of Accountancy, the State Bar, et cetera.

MR. SWEET: Thank you.

MR. MANGELS: You.

THE COURT: And the Department of the Treasury.

MR. SILVERTON: The Department of Treasury didn't make such a motion, your Honor.

THE COURT: I know it. I do it on my own. They are not an appropriate party in here. No jurisdiction.

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE A. ANDREW HAUK,
JUDGE PRESIDING

RONALD R. SILVERTON,

Plaintiff,

vs.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, THE STATE BAR OF CALIFORNIA, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Defendants.

No. 77-4656-AAH

REPORTER'S CERTIFICATE

I, Ira Lee Newlander, do hereby certify that I am a duly appointed Official Court Reporter for the United States District Court for the Central District of California.

I further certify that the foregoing is a full, true, and accurate transcript of proceedings in the above-entitled cause on Monday, April 17, 1978.

Ira Lee Newlander, CSR
Official Reporter

APPENDIX

FILED "L"

MAY 5, 1978

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED

MAY 9, 1978
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD R. SILVERTON,

Plaintiff,

VS.

DEPARTMENT OF THE TREASURY OF THE UNITED STATE OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Defendants.

No. 77-4656 AAH

DECISION AND ORDERS DISMISSING FIRST AMENDED COMPLAINT AND ACTION WITH PREJUDICE

APPEARANCES:

RONALD R. SILVERTON, Plaintiff, in pro per, Los Angeles, California.

ROBERT M. SWEET, ESQ., Los Angeles, California, attorney for The State Bar of California.

EVELLE J. YOUNGER, Attorney General, By: ALAN A. MANGELS, ESQ., Deputy Attorney General, Los Angeles, California, attorneys for the California State Board of Accountancy.

ORDER DISMISSING STATE BAR OF CALIFORNIA

The motion of defendant The State Bar of California to dismiss the above entitled action upon the grounds that the Court lacks jurisdiction over the subject matter and that the First Amended Complaint fails to state a claim upon which relief can be granted came on regularly for hearing on Monday, April 17, 1978, before the Honorable A. Andrew Hauk, United States District Court Judge Presiding in Courtroom No. 1 of the above entitled court. Plaintiff appeared pre se and defendant The State Bar of California ("State Bar") appeared by and

through counsel, Robert M. Sweet. After considering the records and files herein, including Points and Authorities filed by the respective parties, and after taking judicial notice of certain matters as hereinafter specified, the court, being fully advised in the premises, finds and concludes that plaintiff's First Amended Complaint and action against defendant State Bar are fatally defective for each and all of the following reasons:

1. This court lacks subject matter jurisdiction to review alleged federal constitutional defects in the final order of the Supreme Court of California disbarring plaintiff from the practice of law in California (as reported in **Silverton v. State Bar,** 14 Cal. 3d 517 (1975)). Plaintiff's sole recourse from said order was by way of petition for writ of certiorari to the Supreme Court of the United States, which remedy plaintiff failed to pursue. Plaintiff may not in effect obtain such review here by the device of seeking this court's injunction requiring defendant State Bar to expunge from its records (as an administrative arm of the Supreme Court of California) "... any and all reference to the disbarrment of [plaintiff] from the practice of law." This is not the unusual or extreme case where this court may have power to order expunction of state arrest or criminal conviction records because the arrest was unlawful; because the arrest represented harrassing action by

the police; or because the the statutes under which plaintiff suffered his criminal conviction and subsequent disbarment are themselves alleged to be unconstitutional; or because, for reasons beyond the control of the plaintiff, he has been denied fundamental constitutional rights without knowledge or prior opportunity to litigate such issues in state or federal courts. **Shipp v. Todd,** —F.2d— (9th Cir. 1978).

2. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be grated against defendant State Bar because it is an agency or instrumentality in the judicial branch of government of the State of California, functioning as an administrative arm of the Supreme Court of California in matters relating to the admission, discipline and reinstatement of attorneys; and defendant State Bar therefore is not a "person" amenable to suit within the purview of 42 U.S.C. §1983. **Clark v. State of Washington,** 366 F.2d 678, 681 (9th Cir. 1966).

3. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted against defendant State Bar under 42 U.S.C. § 1981 because plaintiff has not alleged that the criminal proceedings or the subsequent and independent disciplinary proceedings which culminated in plaintiff's disbarment were in any way the result of race

discrimination. **Vogel v. Torrance Board of Education,** —F. Supp.— (C.D. Cal. 1978); League of Academic Women v. Regents, 343 F. Supp. 636 (N.D. Cal. 1972).

4. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted against defendant State Bar because the issues relating to the alleged constitutional defects in plaintiff's criminal conviction and the subsequent disciplinary proceedings resulted in plaintiff's disbarment have been fully and finally litigated against plaintiff in prior state and federal court proceedings; and plaintiff's action is therefore barred by the doctrine of res judicata. In this respect, the court takes judicial notice of the following:

(a) In 1972, plaintiff was convicted in the Superior Court of California, County of Los Angeles, of the felonies of conspiracy to defraud and solicitation of grand theft (Sup. Ct. No. A-281235). The judgment of conviction was affirmed by the Court of Appeal of California in an unpublished opinion filed October 31, 1972. (People v. Silverton, 2nd Crim. No. 21868). The Supreme Court of California denied plaintiff's petition for hearing by order filed December 29, 1972. And the United States Supreme Court dismissed plaintiff's appeal for want of a substantial

federal question. 412 U.S. 901 (1973), reh'g den., 414 U.S. 882 (1973).

(b) As is reflected by the "Statement of the Case" in plaintiff's points and authorities in opposition to motion to dismiss, after his criminal conviction became final, plaintiff filed a habeas corpus proceeding in the Superior Court of California alleging, inter alia, that he did not receive a fair trial in the criminal action in that the judge allegedly (i) considered matters (i.e. "contentions") regarding plaintiff's guilt which he heard outside the courtroom and in the absence of plaintiff or his counsel, an (ii) misrepresented his view of plaintiff's guilt and thereby induced plaintiff to waive his rights ot trial by jury and to confront witnesses, submitting the issue of guilt on the transcript of the preliminary hearing. (These, of course, are the very same issues raised in the instant proceedings.) After an evidentiary hearing, the Superior Court of California denied plaintiff's petition for writ of habeas corpus. Thereafter in April, 1974, the Court of Appeal of California denied plaintiff's petition for writ of habeas corpus (2nd Crim. No. 24943); an in May, 1974 the Supreme Court of California denied plaintiff's petition for hearing on such denial.

(c) Plaintiff again raised the same issues (i.e. the alleged misconduct of the trial judge in considering extra-judicial matters and denial of plaintiff's rights to trial by jury and to confront witnesses) in a petition for writ of habeas corpus filed herein in 1974. See Ronald R. Silverton v. California Adult Authority, U.S.D.C., C.D. Cal. No. CV 74-1636-MML (T). As the records of this court reveal, plaintiff's petition was denied by judgment entered on March 31, 1975; and thereafter the court denied plaintiff's applications for reconsideration and for a certificate of probable cause for appeal. Subsequently, the United States Court of Appeals, Ninth Circuit, dismissed plaintiff's appeal as "legally frivolous" (CA No. 75-8390); and the United States Supreme Court denied plaintiff's petition for writ of certiorari. 425 U.S. 912 (1976).

(d) In 1975 plaintiff was disbarred from the practice of law in the courts of the State of California by order of the Supreme Court of California (L.A. No. 30359), as reported in 14 Cal. 3d 517. That order is final, plaintiff having failed to file a petition for writ of certiorari in the United States Supreme Court.

Plaintiff did not request leave to amend his First Amended Complaint and it appears to the court

that plaintiff can prove no set of facts in support of his claim which could entitle him to relief against defendant State Bar.

NOW, THEREFORE, IT IS HEREBY ORDERED that the within action and First Amended Complaint are dismissed at to defendant The State Bar of California, with prejudice.

ORDER DISMISSING ALL OTHER DEFENDANTS

At the time of the aforesaid hearing on the motion of the defendant State Bar of California to dismiss the plaintiff's First Amended Complaint, the Court also heard a motion of the defendant California State Board of Accountancy to dismiss it. After reviewing both of these motions and the points and authorities submitted therewith, as well as all other pleadings and matters on file in this case, and after careful consideration of relevant principles of law, the Court grants the motion of the California State Board of Accountancy to dismiss with prejudice; and, additionally, on its own motion, dismisses the plaintiff's First Amended Complaint with prejudice against the other named defendants, to wit, the Department of the Treasury of the United States of America and John J. Corcoran, County Clerk and Clerk of the Superior Court of California, County of Los Angeles, for the following reasons:

(1) Plaintiff's First Amended Complaint fails to state a claim upon which relief could be granted

against the defendant Department of the Treasury because (1) the decision of the Department of the Treasury to disbar the plaintiff from practice before the Internal Revenue Service is clearly supported by substantial evidence in that plaintiff was convicted of a crime involving moral turpitude; and (2) the Administrative Procedure Act is not violative of the fourteenth amendment.

(2) Plaintiff's First Amended Complaint fails to state a claim upon which relief could be granted against defendants John J. Corcoran and the California State Board of Accountancy because plaintiff's challenge to his state court criminal conviction, which forms the basis of his first amended complaint, has already been litigated and decided adversly to the plaintiff in a federal habeas corpus action and principles of res judicata bar him from relitigating the same issue in this court.

LET THE JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 5, 1978

A. ANDREW HAUK
UNITED STATES DISTRICT JUDGE

FILED

MAY 5 1978

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

ENTERED

MAY 9 1978

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD R. SILVERTON,

Plaintiff,

vs.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, THE STATE BAR OF CALIFORNIA, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Defendants.

No. 77 4656-AAH

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JUDGMENT

On April 17, 1978, the Motions to Dismiss defendants, The State Bar of California and the California State Board of Accountancy, were heard before this Court, the Honorable A. Andrew Hauk, Judge presiding.

Now, the issues having been duly heard and considered and this Court having duly rendered its Decision and Orders dismissing with prejudice plaintiff's First Amended Complaint as against the aforesaid defendants, and also dismissing with prejudice said First Amended Complaint as against the remaining defendants.

IT IS ORDERED, ADJUDGED AND DECREED that said plaintiff's First Amended Complaint and each and every action therein alleged or attempted to be alleged, be and the same is and are dismissed with prejudice as to each and all defendants herein.

DATED: May 5, 1978

A. ANDREW HAUK
UNITED STATES DISTRICT JUDGE

APPENDIX
"M"

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD R. SILVERTON,

Plaintiff,

vs.

DEPARTMENT OF THE TREASURY OF THE UNITED STATES OF AMERICA, OFFICE OF THE DIRECTOR OF PRACTICE, LESLIE S. SHAPIRO, DIRECTOR OF PRACTICE, JOHN J. CORCORAN, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, THE STATE BAR OF CALIFORNIA, THE CALIFORNIA STATE BOARD OF ACCOUNTANCY,

Defendants.

No. 77 4656 AAH

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that RONALD R. SILVERTON, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Judgment entered in this action on the 9th day of May, 1978, dismissing with prejudice plaintiff's first amended complaint against all defendants herein.

DATED: MAY 19, 1978

RONALD R. SILVERTON, Pro Se
3600 Wilshire Boulevard Suite 220
Los Angeles, CA 90010
(213) 381-7511

PROOF OF SERVICE

STATE OF CALIFORNIA)
ss
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 612 North Bush Street, Santa Ana, California 92701.

On Aug. 3, 1981, I served the within Petition For Writ of Certiorari on the interested parties in said action, by placing a true copy in each of 4 sealed envelopse, with postage thereon fully prepaid, in the United States mail at Santa Ana, California, addressed as follows:

Herbert M. Rosenthal
555 Franklin Street
San Francisco, CA 94102

Andrea Sheridan Ordin
United States Attorney
1100 U.S. Courthouse
312 N. Spring Street
Los Angeles, CA 90012

John J. Corcoran	Allen A. Mangels
County Clerk	Depty. Atty. General
County of Los Angeles	300 Tishman Building
111 North Hill Street	3580 Wilshire Boulevard
Los Angeles, CA 90012	Los Angeles, CA 90012

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on Aug. 3, 1981, at Santa Ana, California.

JACK GALLAGHER